

Log No. _____

Contract No. _____

DHS PASS THROUGH CONTRACT WITH LOCAL AGENCY

CONTRACTING PARTIES: This Contract is between the following Division, Office or Unit of the Utah Department of Human Services ("DHS"): Division of Aging and Adult Services, 120 North 200 West, #325, Salt Lake City, Utah 84103 (referred to in this Contract as "DHS/DAAS")

AND

Name: _____

Address: _____

IRS No.: _____

A Utah governmental entity (referred to in this Contract as the "Local Agency") which is an Area Agency on Aging.

QUESTIONS ABOUT THIS CONTRACT: The Local Agency may direct any inquiries about this Contract to DHS/DAAS' Representative:

Title: _____ Name (Optional): _____

Telephone: _____

Address: _____

TABLE OF PROVISIONS IN THIS CONTRACT

PART I:	GENERAL PROVISIONS
PART II:	SCOPE OF WORK AND SPECIAL CONDITIONS
PART III:	PERFORMANCE MEASURES AND CLIENT OUTCOMES
PART IV:	CONTRACT COSTS, BILLING AND PAYMENT INFORMATION
PART V:	COST ACCOUNTING PRINCIPLES AND FINANCIAL REPORTS
PART VI:	BUDGETING PRINCIPLES AND FORMS
PART VII:	SUMMARY OF SOME COMMONLY-APPLICABLE LAWS AND POLICIES
PART VIII:	DISCLOSURE OF LOBBYING ACTIVITIES
PART IX:	JURISDICTION, COPYRIGHT AND OTHER GENERAL PROVISIONS

ATTACHMENTS

☐ **ATTACHMENT ____:** Sole Source Provider Approval

OTHER ATTACHMENTS: (*Requires prior approval from BCM*)

☐ **ATTACHMENT ____:**

☐ **ATTACHMENT ____:**

☐ **ATTACHMENT ____:**

RECITALS

1. DHS/DAAS receives certain federal and state funds which it then distributes to local governments for human services programs in the areas served by the local government agencies; and
2. The Local Agency is local governmental entity that is authorized to receive public funds for the human services programs in its area; and
3. The DHS/DAAS Board is the program policymaking body for DHS/DAAS and for programs (such as those operated by the Local Agency under this Contract) that receive state funding from DHS/DAAS and/or federal "pass-through" funding from DHS; and
4. DHS/DAAS is statutorily authorized to provide the Local Agency with direction on the use of such public funds and to enter into contracts that specify how the Local Agency will use these public funds in its human services programs; and
5. DHS/DAAS works cooperatively with the Local Agency to ensure that these public funds are used appropriately and that DHS/DAAS' directives to the Local Agency are not duplicative or conflicting; and
6. The Local Agency is statutorily accountable to DHS/DAAS for using public funds obtained through this Contract appropriately in its human services programs, and for complying with all applicable state and federal laws, policies, audit requirements, contract requirements and DHS/DAAS directives; and
7. DHS/DAAS is statutorily authorized to monitor the Local Agency's use and management of these public funds; to oversee its governance of the human services programs in the Local Agency's area; and to review the Local Agency's compliance with laws, policies, audit requirements, contract requirements and DHS/DAAS directives; and
8. DHS/DAAS may refuse to contract with and may take legal action against any Local Agency that breaches its contract with DHS/DAAS or that fails to use or expend public funds in accordance with applicable laws, policies and DHS/DAAS directives.

PART I: GENERAL PROVISIONS

SECTION A: CONTRACT DESCRIPTION AND SPECIFICATIONS

1. **PURPOSE AND SCOPE OF CONTRACT:** *Briefly describe the services that the Local Agency will provide under this Contract. (Example: "Local Agency is the local mental health authority and will provide mental health services for Utah County.")*

Part II ("Scope of Work and Special Conditions") and Part III ("Performance Measures and Client Outcomes") of this Contract describe in more detail the services and activities the Local Agency shall provide under this Contract. The Local Agency shall use the funds paid by DHS/DAAS under this Contract only for the purposes specified in this "Purpose and Scope" section and in Parts II and III. The Local Agency represents that it has the financial, managerial and institutional capacity to fully comply with the requirements of this Contract.

2. **CONTRACT PERIOD:** This Contract is effective as of _____ (*insert date*) and terminates on _____ (*insert date*), unless terminated sooner in accordance with the terms and conditions of this Contract. Contracts in excess of one year may be reviewed annually by DHS/DAAS.

3. **TYPE OF CONTRACTOR:**

- a. **Local Agency Is a Subrecipient.** The Local Agency is a governmental entity and is a "Subrecipient." The term "subrecipient" refers to a non-federal governmental entity or a non-profit or for-profit organization that develops and operates its own program of services for eligible clients, and that receives federal and/or state funds from DHS/DAAS or another entity which serves as a "recipient" and "pass-through entity" for such funding. If the Local Agency operates its own program of services for eligible clients, the Local Agency shall comply with the financial record-keeping and reporting requirements that apply to federally-funded subrecipients, even if this Contract is funded solely by *State* funds.
- b. **Local Agency's Subcontractors.** The Local Agency may subcontract this Contract only as provided in Part I, Section E of this Contract. For ease of reference, the contract provisions that apply to subcontractors, but not to the Local Agency, are shown in the Arial typeface (i.e., the typeface used for this sentence).

4. **TYPE OF CONTRACT:**

- a. **This Contract is a Pass-Through Contract.** This Contract requires the Local Agency to provide the services specified in Part II ("Scope of Work and Special Conditions") and Part III ("Performance Measures and Client Outcomes") of this Contract. DHS/DAAS' payment of pass-through funding to the Local Agency shall

be based on supporting documentation from the Local Agency, showing that the service costs were necessary, reasonable and actually incurred by the Local Agency in providing the services required by this Contract, but the payments to the Local Agency shall not exceed the amount specified in Paragraph (5) below ("Compensation for Local Agency").

- b. **Billing Procedures and Cost Principles.** See Part IV of this Contract ("Contract Costs, Billing and Payment Information") for additional provisions about billings, and Part V ("Cost Accounting Principles and Financial Reports") for applicable cost principles.
- c. **DHS/DAAS' Discretion About Client Placements.** DHS/DAAS gives the Local Agency no express or implied guarantee or representation that DHS/DAAS will place any clients with the Local Agency or maintain any client placements with the Local Agency. Except as provided in subsection (4)(d) below regarding services to DHS custody children, the parties anticipate that the Local Agency will accept and place its own clients.
- d. **Services for Clients Placed in DHS Custody.** If a child has multi-disciplinary issues and if the child is eligible for services from more than one division within DHS, the courts sometimes place the legal custody of the child with DHS, rather than placing the child with any particular division. DHS and DHS/DAAS may refer a DHS-custody child to the Local Agency, and upon such referral, the Local Agency shall provide services to the child under this Contract. This provision does not mean, however, that the Local Agency or DHS/DAAS is required to take custody of the child.

5. **COMPENSATION FOR THE LOCAL AGENCY:**

- a. **Fixed Amount of Compensation:** DHS/DAAS shall pay the Local Agency not more than \$_____ for providing the services covered by this Contract, but DHS/DAAS shall pay the Local Agency only for those services that comply with the Local Agency's approved Area Plan and that are supported by adequate documentation of actual costs. See Part IV ("Contract Cost, Billing and Payment Information") for additional budgeting provisions. The Local Agency shall bill DHS/DAAS only for actual costs allowable under federal and DHS cost principles, and the Local Agency shall maintain records that adequately support such costs. The Local Agency is under no obligation to provide services beyond those specified in the approved Area Plan for which funding is provided under this Contract.
- b. **Allowable Fund Balances for Local Authorities.** DHS/DAAS recognizes that if the Local Agency is a statutorily-created Local Agency (i.e., a local mental health authority or local substance abuse authority), the Local Agency may need to maintain a fund balance (i.e., a reserve) in order to comply with Healthcare Financing Administration/Medicaid contracts (which require a ninety-day fund balance), to maintain and expand service capacities, and to pay for capital improvements as needed. As a sound business practice, maintenance of such fund balances is particularly essential for mental health and substance abuse providers

due to uneven flow of revenues and inconsistent expenditure requirements while being required to be at risk by major contractors. Therefore, a Local Agency that is a local mental health authority or a local substance abuse authority may maintain fund balances under this Contract, and the Local Agency's subcontractors may do so also.

c. **Local Substance Abuse and Mental Health Authority Pass-Through Contracts.**

If the Local Agency is a local mental health authority or a local substance abuse authority, all funds received from third-party resources shall be retained by the Local Agency and used for alcohol/drug services in the case of substance abuse authorities, and mental health services in the case of mental health authorities. Third party resources recovered by the Local Agency shall not be a reason for DHS/DAAS to reduce federal and/or state funding.

6. **FUNDING SOURCES AND FUNDING REDUCTIONS:**

a. **Funding Sources.** The funds for this Contract are provided as follows:

CFDA OR STATE COMPLIANCE #	FEDERAL OR STATE (ORIGINAL) FUNDING SOURCE	ESTIMATED PERCENTAGE OR AMOUNT (optional)
<i>TOTAL</i>		

With regard to the information provided in the table above, the parties acknowledge that the percentage of funding from any given funding source for the contract period may vary based on a number of factors, including the specific services purchased from the Local Agency, the frequency with which the Local Agency provides the services, and the eligibility of the clients served by the Local Agency.

b. **Reduction of Funds in Contracts with a Fixed Amount Type of Contract**

Payment: If an order or action by the Legislature or the Governor, or a federal or state law reduces the amount of funding to DHS/DAAS, DHS/DAAS may terminate this Contract or may proportionately reduce the services required by this Contract and the amounts to be paid by DHS/DAAS to the Local Agency for such services. In addition, if the Local Agency defaults in any manner in the performance of any obligation under this Contract, or if DHS/DAAS determines that the Local Agency is significantly underutilizing funds, DHS/DAAS may, at its option, either adjust the amount of payment or withhold payment until satisfactory resolution of the default or underutilization of funds. DHS/DAAS shall give the Local Agency thirty (30)

days notice of any such reduction or termination. Notwithstanding the foregoing, DHS/DAAS shall reimburse the Local Agency in accordance with the original provisions of this Contract for all services performed before the effective date of the reduction or termination.

This is a "Fixed Amount" contract, and if DHS/DAAS reduces the payments under this Contract, the Local Agency may make a proportionate reduction in the amount of services performed or in the number of clients served under this Contract. Before implementing any such reductions in services or client numbers, however, the Local Agency shall notify DHS/DAAS in writing no less than thirty (30) working days after receiving DHS/DAAS' notice of reduction or termination.

7. **COMPLIANCE WITH PROCUREMENT REQUIREMENTS:** The Local Agency is a governmental entity, and this Contract is therefore exempt from the bidding process.
8. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:** This Contract incorporates the following documents by reference:
 - a. All documents specified in this Contract and its attachments;
 - b. All statutes, regulations, or governmental policies that apply to the Local Agency or to the services performed under this Contract, including any applicable laws relating to fair labor standards, the safety of the Local Agency's employees and others, zoning, business permits, taxes, licenses, and incorporation or partnership, and any laws mentioned in Part I, Section C of this Contract ("Local Agency's Compliance with Applicable Laws") or in the attachments to this Contract. The Local Agency acknowledges that it is responsible for familiarizing itself with these laws and complying with them; and
 - c. The Approved Area Plan submitted by the Local Agency for the upcoming State Fiscal Year and any attachments to that Area Plan. Copies of the Area Plan and the attachments may be obtained from DHS/DAAS by contacting _____.

SECTION B: LOCAL AGENCY'S LEGAL STATUS AND INDEMNIFICATION RESPONSIBILITIES

1. **LOCAL AGENCY IS AN INDEPENDENT CONTRACTOR:** The Local Agency is an independent contractor, and as such, shall have no authorization, express or implied, to bind DHS/DAAS or any state agency to any agreements, settlements, or liability. However, nothing in this Contract shall be construed to limit the Local Agency's authority to bind itself to agreements, settlements or liability, as long as such agreements, settlements or liability affect only itself and not DHS/DAAS. The Local Agency is not authorized to act as an agent for DHS/DAAS, except as expressly provided in this Contract. Persons employed by DHS/DAAS and acting under direction of DHS/DAAS shall not be deemed to be employees or agents of the Local Agency. Likewise, persons employed by the Local Agency and acting under the direction of the Local Agency shall not be deemed to be employees or agents of DHS/DAAS except as expressly provided in this contract. As an

independent contractor, the Local Agency is responsible for its own operations and for providing the office space, supplies, equipment, tools, and other supports necessary to provide the services covered by this contract unless specifically stated otherwise in the contract Scope of Work. The compensation paid to the Local Agency under this Contract shall be Local Agency's total compensation from DHS/DAAS for the services provided under this Contract and the Local Agency is responsible for the payment of any and all tax liabilities incurred as a result of the compensation received.

2. **PROTECTION AGAINST LIABILITY; LOCAL AGENCY'S SUBCONTRACTORS MUST PROVIDE INSURANCE AND INDEMNIFICATION:**

- a. **Local Agency and the Utah Governmental Immunity Act:** Consistent with the terms of the Governmental Immunity Act (Title 63, Chapter 30 of the Utah Code), the Local Agency and DHS/DAAS are each responsible and liable for any wrongful or negligent acts which that party itself commits or which are committed by its agents, officials, or employees. Neither party waives any defenses otherwise available under the Governmental Immunity Act. If the Local Agency has a subcontractor, that subcontractor shall comply with the insurance and indemnification requirements of this Contract, unless the subcontractor is also a Utah governmental entity, in which case this paragraph (a) shall apply.
- b. **Workers' Compensation:** The Local Agency and its subcontractors shall comply with the Utah Workers' Compensation Act (Title 34A, Chapter 2 of the Utah Code) which requires employers to provide workers' compensation coverage for their employees.
- c. **Required Insurance for Non-Governmental Subcontractors.** A non-governmental Subcontractor shall maintain adequate protection against liability and shall comply with the insurance and indemnification provisions set forth in this Contract. *See* definition of "subcontractor" in Part I, Section E, Paragraph 1 of this Contract. Specifically, unless DHS' Deputy Director for Support Services gives prior written consent to a different arrangement, the Subcontractor shall maintain commercial insurance or self-insurance for the dollar amounts and types of coverage specified in this Contract. Any commercial insurance shall be obtained from insurance companies authorized to do business in the State of Utah and rated "A-" or better with a financial size category of Class VII or larger, according to the ratings and financial size categories published by A.M. Best Company at the time this Contract is executed.

Commercial insurance may be obtained from an insurance company that does not meet the above stated A. M. Best Company rating and/or class size, **if** the Subcontractor provides documentation verifying the insurance company providing the Subcontractor's insurance **is reinsured** by another affiliated insurance company that **does meet** the required rating and class size requirements.

The Subcontractor's insurance policy shall include an endorsement that names the State of Utah, DHS, DHS/DAAS and their officers and employees as additional insureds, and the policy shall provide the State of Utah, DHS, DHS/DAAS and their officers and employees with primary coverage (not contributing coverage) for any liability arising as a result of the Subcontractor's acts or omissions in connection with this Contract. The Subcontractor is not required, however, to obtain an "additional insured" endorsement for any professional liability insurance policy or Workers' Compensation insurance policy required by this Contract. *See* subsections (2)(e)(1)(c), (2)(e)(3) and (2)(b) of this provision ("Protection Against Liability; Local Agency's Subcontractors Must Provide Insurance and Indemnification").

- d. **Deductibles and Similar Costs.** The Subcontractor shall be responsible for paying any deductibles, self-insured retentions or self-insurance costs. The deductible for the insurance policies required by this Contract may not exceed \$1,000.00, unless the Subcontractor obtains prior written approval of the deductible (and the corresponding policy) from DHS/DAAS.

e. **Types of Liability Protection the Subcontractor Must Provide:**

- (1) **Private Subcontractor—Commercial Insurance Required:** If the Subcontractor is not a governmental entity of the State of Utah, the Subcontractor shall maintain the following policies of liability insurance at its sole expense during the term of this Contract, unless the Subcontractor has already satisfied the requirements of the "self-insurance" provision (subsection (2)(c)(2)) below:
 - (a) **General Liability Insurance:** The Subcontractor shall maintain policies of general liability insurance that at a minimum shall cover the following types of liability: bodily injury or death, personal injury, property damage, broad form property damage, and liability for the property of others in the care, custody and control of the Subcontractor. The policy shall provide for a combined single limit or the equivalent of not less than \$1,000,000 for each occurrence. If the Subcontractor is providing services at more than one site, the general liability insurance must cover each of those sites. If the general liability insurance coverage obtained by the Subcontractor is written on a "claims-made" basis, the certificate of insurance shall so indicate, and the policy shall contain an extended reporting period provision or similar "tail" provision such that the policy covers claims reported up to five (5) years beyond the date that this Contract is terminated.
 - (b) **Automobile Insurance:** If the Subcontractor's services involve transporting any clients or goods for DHS/DAAS, the Subcontractor shall maintain a policy of automobile liability insurance covering property damage, personal injury protection, and liability for the vehicles used by the Subcontractor (including owned, hired and non-owned vehicles.) The policy shall provide for a combined single limit, or the equivalent, of not less than \$1,000,000. If the Subcontractor

subcontracts with another entity or individual for transportation services, or services that include transportation services, the Subcontractor may satisfy this insurance requirement by submitting proof that its subcontractor has complied with the requirements of the "Insurance and Indemnification" section of this Contract. If the Subcontractor provides individual residential care services by contracting with individual residential care homes, not only must the Subcontractor maintain a policy of automobile liability insurance as indicated above, but each of the Subcontractor's individual residential care homes must also maintain a policy of automobile liability insurance. The policy of automobile liability insurance required of individual residential care homes must cover property damage, personal injury protection and liability with a combined single limit or the equivalent of not less than \$100,000 per person and \$300,000 for each accident/occurrence occurring during the course of their duties as an individual residential care home. **As used in this provision, the term "individual residential care" refers to twenty-four hour family-based care for one or more clients in foster/proctor care, a host home, or a professional parent setting.**

- (c) *Professional Liability Insurance:* If the Subcontractor employs doctors, dentists, social workers, mental health therapists or other professionals to services under this Contract, the Subcontractor shall maintain a policy of professional liability insurance with a limit of not less than one million dollars (\$1,000,000) per occurrence and aggregate. This professional liability insurance shall cover damages caused by errors, omissions or negligence related to the professional services provided under this Contract.

- (2) **Private Subcontractor—No Commercial Insurance Required, But Self-Insurance, Indemnification and Prior DHS Approval Required:** If the Subcontractor claims that it is self-insured, the Subcontractor shall provide DHS with adequate evidence that the Subcontractor is financially solvent and has established financial arrangements (such as a written comprehensive self-insurance program, performance bonds or fidelity bonds) that will provide DHS with liability protection at least as adequate and extensive as the insurance otherwise required under this Contract for non-governmental entities. Specifically, the Subcontractor must show that its ability to process and pay claims adequately, fairly and in a timely manner is comparable to a commercial insurer that provides general-liability insurance, automobile insurance and professional liability insurance. Before executing a contract with the Local Agency, the Subcontractor shall obtain from the DHS Deputy Director for Support Services or the Deputy Director's designee a written statement indicating that DHS has determined, based on the Subcontractor's financial evidence and representations, that the Subcontractor's self-insurance arrangements and indemnification agreements are sufficient to satisfy the requirements of this Contract, and the Subcontractor is therefore not required to obtain additional commercial liability insurance naming DHS/DAAS as an insured party. If it sees fit, DHS may include in this

statement any additional conditions designed to ensure that the Subcontractor's self-insurance arrangements are comparable to the insurance required of other non-governmental Subcontractors. A copy of the Deputy Director's or the designee's statement is attached to this Contract, and is a material provision of this Contract. Nothing in this provision shall be construed to require DHS to consent to any self-insurance arrangements, and DHS may withhold its approval for any reason whatsoever.

- (3) **Doctors, Dentists, Mental Health Therapists and Other Professionals:** If the Subcontractor is a doctor, dentist, social worker, mental health therapist or other professional who provides services directly to clients, the Subcontractor shall obtain from a commercial insurer and maintain at its sole expense a policy of general liability insurance and a policy of professional liability insurance ("malpractice insurance") during the term of this Contract. The policy shall provide for a limit of not less than \$1,000,000 per occurrence and aggregate.

f. **Indemnification.** Regardless of the type of insurance required by this section, the Local Agency (and where applicable, the Subcontractor) shall provide the following indemnification:

- (1) **Indemnification by the Local Agency and Governmental Subcontractors.** The Local Agency and DHS/DAAS shall defend, hold harmless and indemnify each other and their respective employees, agents, volunteers and invitees from and against all claims resulting from their negligent or wrongful conduct under this Contract, but in no event shall the indemnification obligation of either party exceed the amount set forth in Section 63-30-34 of the Utah Governmental Immunity Act or any similar statute in effect when a judgment is entered. Personal injury or property damage shall have the same meaning as defined in the Utah Governmental Immunity Act. This Contract shall not be construed with respect to third parties as a waiver of any governmental immunity to which a party to this Contract is otherwise entitled. If the Subcontractor is a governmental entity of the State of Utah, this paragraph shall apply.
- (2) **Indemnification by Non-Governmental Subcontractor:** If the Subcontractor is not a governmental entity of the State of Utah, the Subcontractor shall defend, hold harmless and indemnify DHS/DAAS and its employees and agents from and against all claims arising under this Contract as a result of the Subcontractor's acts or omissions to act. If a court determines that the conduct of DHS/DAAS or its agents or employees is solely responsible for the claim in question, the Subcontractor shall have no obligation to indemnify DHS/DAAS, and DHS/DAAS shall reimburse the Subcontractor for any reasonable attorney's fees and costs actually incurred by the Subcontractor in defending the action.
- (3) **Definition of the Term "Claim":** As used in these "Indemnification" provisions, the term "claim" includes any and all claims, losses, damages,

liabilities, judgments, costs, expenses, attorneys' fees and causes of action of every kind or character (including personal injury, death, and damages to property or business interests) arising because of, out of, or in any way connected with the services covered by this Contract or with a party's failure to comply with the provisions of this Contract.

- (4) **Defense of Suits Brought Upon Claims:** The Local Agency (and where applicable, the Subcontractor) shall defend all suits brought upon a claim and shall pay all incidental costs and expenses, but DHS/DAAS shall have the option to participate in the defense of any such suit in which DHS/DAAS perceives that its interests are not being protected by the Local Agency or the Subcontractor. In such cases, the participation of DHS/DAAS does not relieve the Local Agency and the Subcontractor of any obligation under this Contract. However, if DHS/DAAS elects to retain independent counsel, DHS/DAAS shall pay the attorney's fees and costs associated with such counsel.

- (5) **No Subrogation or Contribution:** The Local Agency and its Subcontractors understand that they have no right of subrogation or contribution from the State, DHS or DHS/DAAS for any judgment rendered against the Local Agency or the Subcontractor to the extent that such judgment results from the Local Agency or the Subcontractor's own negligence or material failure to perform under the terms of this Contract.

- g. **Certificate of Insurance, "Additional Insured" Endorsement, and Evidence of Continued Coverage.** Before signing this Contract, a non-governmental Subcontractor shall obtain from its insurer(s) and shall provide to DHS/DAAS certificates of insurance and "additional insured" endorsements that indicate that the required coverage is in effect and that the insurer shall give DHS/DAAS thirty (30) days notice of any modification, cancellation or nonrenewal of the policy. On an annual basis and upon request from DHS/DAAS, a non-governmental Subcontractor shall provide DHS/DAAS with evidence that the Subcontractor has the insurance coverage required by this Contract. Governmental entities are not required to provide certificates of insurance, "additional insured" endorsements or evidence of continued coverage.

3. **EMERGENCY MANAGEMENT AND BUSINESS CONTINUITY PLAN:** The Local Agency shall use qualified personnel to perform all services in conformity with the requirements of this Contract and generally recognized standards. The Local Agency represents that it has developed an emergency management and business continuity plan that allows the Local Agency to continue to operate critical functions or processes during or following an emergency, and the Local Agency acknowledges that DHS/DAAS may rely upon this representation. The Local Agency shall evaluate its emergency management and business continuity plan at least annually, and shall modify that plan as appropriate.

SECTION C: LOCAL AGENCY'S COMPLIANCE WITH APPLICABLE LAWS

1. **COMPLIANCE WITH APPLICABLE LAWS.** The Local Agency shall comply with all Applicable Laws. For purposes of convenience, the term "Applicable Laws" as used in this Section refers to all federal statutes and regulations, executive orders, state statutes and regulations, and DHS policies that apply to the Local Agency's activities or that impose restrictions on the Local Agency's use of federal or state funding or grants. To assist the Local Agency in identifying and complying with the Applicable Laws, this Section C ("Local Agency's Compliance with Applicable Laws") and Parts IV, V and VII of this Contract ("Contract Costs, Billing and Payment Information," "Cost Accounting Principles and Financial Reports," and "Summary of Some Commonly-Applicable Laws and Policies") include a listing and description of some commonly-applicable laws and policies. Local Agency understands, however, that this Contract may not contain a complete list, that most business entities are subject to a wide variety of laws, and that it is the Local Agency's responsibility to obtain appropriate advice about the scope and applicability of the laws and policies governing its activities.
2. **CERTIFICATION OF NON-DEBARMENT.** Pursuant to 45 C.F.R. 76.100 *et seq.* and Executive Orders 12549 and 12689, DHS may not award contracts to entities that are listed on the government-wide debarment and suspension system. The Local Agency certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any governmental entity. If the Local Agency cannot so certify, the Local Agency must attach a written explanation and DHS/DAAS must obtain *prior* written approval for this Contract from the DHS Deputy Director for Support Services. Failure to obtain such prior written approval shall be considered a material breach of this Contract.
3. **DISCRIMINATION PROHIBITED:** The Local Agency shall not discriminate against any person on the basis of race, color, sex, religion, ancestry, national origin, age, disability, or pregnancy or childbirth. The Local Agency understands, for example, that the federal Office for Civil Rights has adopted policy guidelines that require DHS/DAAS and the Local Agency to ensure that DHS services are reasonably accessible to individuals with "limited English proficiency." See <http://www.hhs.gov/ocr/generalinfo.html>. The guidelines specify when a Local Agency must provide interpreter services for non-English speaking clients and they state that it is generally inappropriate to use the clients' relatives, especially minors, as interpreters. The Local Agency shall also comply with the Utah Civil Rights Act (Sections 13-7-1 through 13-7-4 of the Utah Code), which prohibits discrimination by any business establishment, place of public accommodation, or enterprise regulated by the State of Utah.
4. **UNLAWFUL HARASSMENT PROHIBITED:** The Local Agency shall comply with state and federal laws and regulations that prohibit unlawful harassment in the workplace, including the Utah Anti-Discrimination Act (Title 34A, Chapter 5 of the Utah Code) and Utah Executive Order dated March 17, 1993.

5. **DRUG-FREE WORKPLACE:** The Local Agency shall maintain a drug-free workplace in accordance with federal and state statutes, regulations and policies, including guidelines and policies established by the State of Utah and DHS.
6. **HUMAN SUBJECTS RESEARCH:** The Local Agency may not conduct any research involving human subjects, who are employees of DHS or individuals receiving services (whether direct or contracted) from DHS, or where DHS has provided funding for a project that includes research in the contract, unless the Local Agency has obtained prior written approval from the DHS Institutional Review Board (IRB), and from any other federal or state agencies whose approval is required for research on human subjects. Before conducting any research on human subjects, the Local Agency shall fully comply with any requirements or conditions, including requirements relating to informed consent, imposed by such IRB committees or agencies. DHS Policy Manual, Policy No. 01-10, explains the policies and procedures for obtaining approval from the DHS IRB.
7. **COMPLIANCE WITH LICENSING STANDARDS AND OTHER LAWS:** The Local Agency represents that it currently meets all applicable licensing standards and other requirements of federal and state law, and all applicable ordinances of the city or county in which services or care is provided. The Local Agency shall continue to comply with all such applicable standards, requirements and ordinances during the term of this Contract, and if the Local Agency fails to do so, DHS/DAAS may terminate this Contract immediately.
8. **COMPLIANCE WITH DHS' PROVIDER CODE OF CONDUCT:** Except as provided in subsection (d) of this Paragraph 8, the Local Agency shall follow and enforce DHS' Provider Code of Conduct. The DHS Provider Code of Conduct may be found at the following web site: http://www.dhs.utah.gov/pol_reports.htm (*Select "Department & Policy Procedures"; then select "Section V -- Security/Risk Management/Liability"; then select 05-03 "Provider Code of Conduct"*).
 - a. Before allowing any employee or volunteer to work with clients under this Contract, the Local Agency shall also comply with the following requirements:
 - (1) The Local Agency shall provide a current copy of the Code of Conduct to each employee or volunteer currently working for the Local Agency and to any new employees or volunteers; and
 - (2) The Local Agency shall retain in each employee or volunteer's file a signed and dated statement in which that person certifies that he or she has read and understood the Code of Conduct and will comply with it.
 - b. As used in this Paragraph 8, "volunteer" means a person who:
 - (1) donates services to the Local Agency without pay or other compensation, except for expenses incurred (such as for meals and travel costs); and
 - (2) is a board member, officer, or other person who is substantially involved in the Local Agency's decision-making processes, or is a person who has direct unsupervised contact with DHS/DAAS clients.

- c. DHS/DAAS shall annually provide the Local Agency a copy of the current DHS Provider Code of Conduct poster. The Local Agency shall prominently display the poster where the employees and volunteers can see it.
- d. If the Local Agency is a Utah governmental entity, the Local Agency may enforce its own written Code of Conduct in lieu of the DHS Provider Code of Conduct if the Local Agency first provides DHS/DAAS with a written certification that the Local Agency has compared its own Code of Conduct and the DHS Provider Code of Conduct, and has determined that its own Code of Conduct is at least as comprehensive and stringent as the DHS Provider Code of Conduct. The governmental Local Agency shall also give its employees and volunteers a copy of its Code of Conduct before they begin working with the clients under this Contract, and the governmental Local Agency shall retain in each employee or volunteer's file a signed and dated statement in which that person certifies that he or she has read and understood the Local Agency's Code of Conduct and will comply with it.

9. **RESTRICTIONS ON CONFLICTS OF INTEREST:**

- a. **Purpose and Overview.** The purpose of this Section is to assure that the goods and services provided to DHS/DAAS under this Contract afford DHS/DAAS a commercially reasonable level of quality and cost. These provisions prohibit Local Authorities and anyone acting on their behalf from using their employment with the State of Utah or their relationship with others, including potential subcontractors, to enter into any transaction or arrangement that is improper or gives the appearance of being improper because of that person's State employment or relationship with a third party.

The following table summarizes the key monitoring and reporting requirements in this Section:

CONFLICTS-OF-INTEREST MONITORING AND REPORTING REQUIREMENTS	
Local Agency and Governmental Subcontractors	Non-Governmental Subcontractors
Give DHS a Certificate of Compliance before entering into this Contract or a subcontract relating to this Contract; and Give DHS a Disclosure Form that	Give DHS a Disclosure Form before entering into the subcontract with the Local Agency; and Disclose new conflicts of interest as they arise during the term of this Contract;

identifies any existing and new conflicts of interest that relate to this Contract and are worth \$2,000 or more, and then obtain prior approval from DHS before entering into transactions or decisions involving these conflicts of interest.	and Obtain prior approval from DHS before entering into any transactions that involve a conflict of interest that relates to this Contract.
---	--

b. **Definitions**

- (1) **"Business Entity"** includes a sole proprietorship, partnership, association, joint venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on a business.
- (2) **"Conflict of Interest"** means any situation where the Local Agency or any Representative of the Local Agency has economic, social, political, familial, or other interests which interfere with, or have the potential to interfere with, the exercise of that person's duties, responsibilities, or judgment on behalf of the Local Agency or DHS/DAAS in connection with this Contract, or which involve conflicting loyalties to the Local Agency and to another interest. "Conflict of Interest" also includes any violation of the Ethics Acts, as explained in Paragraph (9)(d) below.
- (3) **"Disclosure Statement"** means a written statement provided to DHS/DAAS by the Local Agency or a subcontractor about their Conflicts of Interest, including the information listed in Paragraph (9)(f)(2) below. A form entitled "Conflict of Interest – Disclosure Statement" is available from DHS/DAAS, and may be obtained through a DHS/DAAS Contract Representative or through the DHS Bureau of Contract Management web site:
http://www.hsofo.utah.gov/contract_forms.htm
- (4) **"Dual Employment"** means employment by more than one of the following entities: the State of Utah, the Local Agency, and another employer such as a subcontractor.
- (5) **"Local Agency"** means the local governmental entity contracting with DHS/DAAS, and includes all "Representatives" of that entity. (Paragraph (9)(b)(8) below defines the term "Representative.") If the Local Agency subcontracts any of its duties under this Contract, the term "Local Agency," as used generally in this Paragraph (9) also refers to the subcontractor and its Representatives, except as expressly provided in Paragraph (9)(f) below, which establishes different monitoring and reporting requirements for certain non-governmental subcontractors. *See* definition of "Subcontractor" in Part I, Section E, Paragraph 1 of this Contract.
- (6) **"Related Party"** means:

- (a) any person related to the Local Agency by blood or marriage, which, for purposes of this Contract, includes parents, spouses, children, siblings, grandparents, grandchildren, uncles, aunts, nephews, nieces, first cousins, and in-laws; and
 - (b) all business associates of the Local Agency:
 - (i) who are partners, directors, or officers in the same business entity as the Local Agency;
 - (ii) who have authority to make decisions or establish policies in the same business entity as the Local Agency; or
 - (iii) who directly or indirectly own 10% or more in the same business entity as the Local Agency.
- (7) **“Related-Party Transaction”** means payments made by the Local Agency to a Related Party in any manner or description (including those relating to administrative costs, capital expenditures, program expenditures, and payments for goods, services, facilities, leases, salaries, wages, professional fees or similar expenses) in connection with this Contract. “Related-Party Transaction” also means arrangements made between the Local Agency and a Related Party, whether or not payments are involved, which affect the performance of this Contract in any manner.
- (8) **“Representative”** means any person or entity acting on behalf of the Local Agency, and includes all employees, owners, partners, directors, officers, board members, and agents of the Local Agency, as well as any other individual or group of individuals with authority to establish policies or make decisions for the Local Agency. “Volunteers,” as defined in Paragraph (9)(b)(9) below, are not “Representatives” and are not required to be included in the Local Agency’s Disclosure Statement, unless they are board members or officers, or are substantially involved in the Local Agency’s decision-making processes, or unless they have direct, unsupervised contact with DHS/DAAS clients.
- (9) **“Volunteer”** means a person who donates services to the Local Agency without pay or other compensation, except for expenses incurred (such as for meals and travel costs).
- c. **Restrictions on Conflicts of Interest.** Transactions involving Conflicts of Interest are prohibited to the extent that they are in any way the result of undue influence, or if they have the potential to result in increased costs, decreased performance, the appearance of impropriety, or any other disadvantage to DHS/DAAS. Any Conflict of Interest that influences DHS/DAAS’ decision to enter into this Contract with the Local Agency or that influences any transactions undertaken by the Local Agency pursuant to this Contract is a prohibited Conflict of Interest. Conflicts of Interest can occur in one of three ways:

- (1) **Dual Employment.** Conflicts of Interest involving Dual Employment can occur when a Local Agency's Representative is also employed by the State of Utah or by another employer such as a subcontractor. *See also* Paragraph (9)(d) below for statutory requirements relating to Dual Employment.
- (2) **Related-Party Transactions.** Conflicts of Interest involving Related-Party Transactions occur when the Local Agency makes payments to a Related Party in any manner or description using money obtained from DHS/DAAS through this Contract. Conflicts of Interest can also occur when arrangements are made between the Local Agency and a Related Party, whether or not payments are involved, which affect the performance of this Contract in any way.
- (3) **Independent Judgment Impaired.** Conflicts of Interest involving impaired judgment occur when the Local Agency's Representative participates in any transaction on the Local Agency's behalf and has a significant relationship or shared interest with another party to the transaction, and this relationship or shared interest is not covered by the Related-Party Transaction restrictions in Paragraph (9)(c)(2) above, but could affect the Representative's ability or willingness to exercise independent judgment for the benefit of the Local Agency.

Example: An employee of the Local Agency negotiates and authorizes a subcontract with her best friend's company.

- d. **Dual Employment and Local Agency's Compliance with the Ethics Acts.** While dual employment is not prohibited, the Local Agency shall take measures to ensure that the Local Agency's Representatives do not use their dual employment to influence either DHS/DAAS' decision to enter into this Contract or to influence any transactions undertaken by the Local Agency in furtherance of this Contract.

The Local Agency shall comply at all times with the applicable provisions of the Utah Public Officers' and Employees' Ethics Act (Title 67, Chapter 16 of the Utah Code) and the Municipal Officers' and Employees' Ethics Act (Title 10, Chapter 3, Part 13 of the Utah Code) (referred to collectively as the "Ethics Acts"). The Ethics Acts prohibit public officers and public employees from having personal involvement in any Business Entity if that involvement creates a substantial conflict between their private interests and their public duties. The parties agree, however, that except as otherwise expressly provided in the "Related-Party Transaction" and "Independent Judgment Impaired" provisions of this Contract, nothing in this Contract is intended to expand or modify the Local Agency's obligations under the Ethics Acts.

- e. **Local Agency Policies and Internal Review:** The Local Agency shall familiarize its Representatives with:

- (1) the Conflict of Interest concept and the certification/disclosure requirements of this Contract; and
- (2) the applicable provisions of the Ethics Acts.

The Local Agency shall implement a written policy that requires its Representatives to disclose to the Local Agency all existing, potential, and contemplated Conflicts of Interest. The Local Agency shall also regularly review any disclosures and its own operations to reasonably assure DHS/DAAS that the Local Agency avoids prohibited Conflicts of Interest.

f. **Disclosing Conflicts of Interest to DHS:**

- (1) **Requirements for Governmental Entities Such As the Local Agency and Its *Governmental* Subcontractors.** Before entering into this Contract or a subcontract related to this Contract, the Local Agency and any *governmental* subcontractors shall comply with the following requirements:

- (a) **Certification of Compliance.** The Local Agency and its *governmental* subcontractors shall submit to DHS/DAAS a written certification, in which they certify that they maintain a written policy as required by Paragraph (9)(e) above. The certification shall also provide that the Local Agency and the governmental subcontractor monitor for compliance with the Conflict of Interest provisions of this Contract and that they can reasonably assure DHS/DAAS that Representatives with a potential Conflict of Interest do not:
 - (i) make or influence decisions or set policies that affect this Contract;
 - (ii) monitor the performance of this Contract; or
 - (iii) become involved in or otherwise benefit from the performance of this Contract.

A form entitled "Conflict of Interest Certification" is available from DHS/DAAS, and may be obtained through a DHS/DAAS Contract Representative or through the DHS Bureau of Contract Management web site: http://www.hsofo.utah.gov/contract_forms.htm

- (b) **Disclosure of Substantial Conflicts of Interest:** Before entering into this Contract or a subcontract relating to this Contract, the Local Agency and its governmental subcontractors shall disclose to DHS/DAAS any Conflict of Interest that relates to this Contract or the services provided under this Contract if the Conflict of Interest involves any payment or transaction or salary worth \$2,000 or more in a single state fiscal year. For all such Conflicts of Interest, the Local Agency or governmental subcontractor shall submit a

Disclosure Statement which includes all of the information required by Paragraph (9)(f)(2) below. The Local Agency or governmental subcontractor shall also comply with the requirements of Paragraph (9)(f)(3) regarding the continuing duty to disclose these Conflicts of Interest.

(c) **Option to Disclose All Conflicts of Interest:** In lieu of complying with the certification-and-disclosure requirements of this Paragraph (9)(f)(1), the Local Agency and its governmental subcontractors have the option to comply with the disclosure requirements for *non-governmental* subcontractors. See Paragraph (9)(f)(2) below.

(2) **Requirements for Non-Governmental Subcontractors:** Before entering into any subcontract with the Local Agency to perform services covered by this Contract, a non-governmental subcontractor shall submit a Disclosure Statement to DHS/DAAS in which the non-governmental subcontractor discloses any existing or potential Conflicts of Interest, including all information required by the Ethics Acts and this Contract. Specifically, the Disclosure Statement shall include:

(a) **For Conflicts of Interest Involving Dual Employment** (defined in Paragraph (9)(b) and explained in Paragraph (9)(c) above), the following information is required:

- (i) whether any of the subcontractor's Representatives are engaged in Dual Employment, as defined in Paragraph (9)(b)(4);
- (ii) the name of the subcontractor's Representative engaged in Dual Employment;
- (iii) the titles or positions held by the subcontractor's Representative engaged in Dual Employment;
- (iv) the Representative's decision-making or monitoring authority with the employing entities, and how that Representative's authority affects this Contract or any subcontract relating to this Contract; and
- (v) the measures taken by the subcontractor to protect DHS/DAAS from potentially adverse effects resulting from the Representative's Dual Employment.

(b) **For Conflicts of Interest involving Related-Party Transactions or Impaired Judgment** (defined in Paragraph (9)(b) and explained in Paragraph (9)(c) above), the following information is required:

- (i) the name of the subcontractor's Representative having the Conflict of Interest;
- (ii) the name of the other party to the Conflict of Interest;
- (iii) the relationship between the individuals identified in (i) and (ii) above;

- (iv) the nature and value of the interest (if any) held by the Representative in the other Business Entity;
 - (v) a description of the transaction to which the Conflict of Interest applies and the dollar amount involved (if any);
 - (vi) the decision-making or monitoring authority of the subcontractor's Representative and the party identified in (ii) above, with respect to the applicable transaction or decision;
 - (vii) the potential effect of the Conflict of Interest on this Contract or any subcontract relating to this contract; and
 - (viii) the measures taken by the subcontractor to protect DHS/DAAS from potentially adverse effects resulting from the identified parties' relationship.
- (c) If the non-governmental subcontractor has no Conflicts of Interest, the subcontractor shall so indicate on the Disclosure Statement. By submitting a Disclosure Statement, the subcontractor is certifying to DHS/DAAS that it has checked its organization and has required its Representatives to disclose their Conflicts of Interest, and that it has disclosed all known Conflicts of Interest to DHS/DAAS.
- (d) The non-governmental subcontractor shall also comply with the requirements of Paragraph (9)(f)(3) regarding the continuing duty to disclose its Conflicts of Interest.
- (3) **Continuing Duty to Disclose Conflicts of Interest.** The Local Agency and its subcontractors have a continuing duty to immediately send DHS/DAAS an updated Disclosure Statement if, at any time during the term of this Contract between the Local Agency and DHS/DAAS, they contemplate any transaction involving a Conflict of Interest, or hire or affiliate with any individual with a potential Conflict of Interest, or discover any existing Conflict of Interest, and if that Conflict of Interest is one that must be disclosed under this Contract. Additionally, for contracts in excess of one year, the Local Agency and its subcontractor shall update their "Conflict of Interest Certification" and Disclosure Statements by July 1 of each year, containing the same information required by the initial certification and disclosure described in Paragraph (9)(f)(1)-(2) above.

g. **DHS/DAAS' Response to Disclosure Statements.**

- (1) **Initial Approval, Disapproval or Remedial Action Requirement.** DHS/DAAS shall submit a written response to the Local Agency or subcontractor within fourteen days after receiving a Disclosure Statement. The response shall acknowledge receipt of the Disclosure Statement, and shall advise the Local Agency or the subcontractor that:
- (a) DHS/DAAS does not require any additional information or remedial action before executing or continuing this Contract; or

- (b) DHS/DAAS requires additional information or disclosures or requires the Local Agency or the subcontractor to undertake specific remedial action before executing or continuing this Contract; or
 - (c) DHS/DAAS disapproves certain identified transactions due to one or more prohibited Conflicts of Interest and unless the Local Agency or the subcontractor discontinues those transactions, DHS/DAAS will declare this Contract breached and terminated.
- (2) **DHS/DAAS' Right to Continue Its Investigation and Revise Its Response.** If DHS/DAAS fails to respond to the Local Agency or the subcontractor within fourteen days of receiving the Disclosure Statement, the disclosing party may proceed as if no additional information or remedial action were required. The parties expressly agree, however, that regardless of any action taken pursuant to the response provisions contained in Paragraph (9)(g)(1) above, DHS/DAAS retains the right to do any of the following if, at any time during the term of this Contract, DHS/DAAS determines that a Conflict of Interest problem exists:
 - (a) Continue to investigate any potential Conflict of Interest;
 - (b) Require further information from the Local Agency or the subcontractor;
 - (c) Require specific remedial action; or
 - (d) Disapprove identified transactions.
- h. **Monitoring Compliance with the Conflict of Interest Provisions of This Contract.** DHS/DAAS reserves the right to investigate and audit the records and transactions of the Local Agency and its subcontractors at any time to determine if the Local Agency and its subcontractors have complied with the restrictions on Conflicts of Interest, and to determine if the Local Agency and its subcontractors took appropriate measures to assure that the goods or services provided under this Contract afford DHS/DAAS a satisfactory level of quality and cost. Appropriate measures taken by the Local Agency and its subcontractors to avoid improper Conflicts of Interest might include, for example, competitive bidding for the goods or services purchased by the Local Agency or the subcontractor, or a requirement that billings include supporting documentation showing that costs were necessary, reasonable and actually incurred.
- i. **Remedies for Non-Compliance with the Conflict of Interest Provisions of This Contract.** The parties expressly acknowledge that if DHS/DAAS reasonably determines that the Local Agency or a subcontractor has failed to comply with the Conflict of Interest provisions of this Contract and has entered into any prohibited transaction or arrangement that is disadvantageous to DHS/DAAS, DHS/DAAS shall have the option to rescind or void this Contract without paying for services provided and without returning any consideration received. Regardless of whether

DHS/DAAS rescinds this Contract, DHS/DAAS shall also have the option to disallow the Local Agency and the subcontractor's expenditures and to adjust its payments to the Local Agency by deducting such disallowed expenditures or by requiring the Local Agency to immediately refund any payments previously made, as provided in Part IV, Paragraphs 8 and 9 of this Contract ("Overpayments, Audit Exceptions and Disallowances" and "Payment Withholding"). If DHS/DAAS requests a refund from the Local Agency, the Local Agency shall refund the payment within thirty (30) days of receiving notice of such overpayment, and shall pay DHS/DAAS interest at the rate of eight percent (8%) a year, beginning on the thirty-first day after the Local Agency receives such notice.

SECTION D: COMPLIANCE MONITORING AND RECORD KEEPING RESPONSIBILITIES

1. **MONITORING OF LOCAL AGENCY'S PERFORMANCE:** DHS and DHS/DAAS shall have the right to monitor the Local Agency's and any subcontractor's performance of all services purchased under this Contract, including the Local Agency's or subcontractor's expenditure of public funds. Monitoring of Local Agency's performance shall be at the complete discretion of DHS and DHS/DAAS, who will rely on the criteria set forth in this Contract, including the goals, service objectives and methods described in Parts II and III ("Scope of Work and Special Conditions" and "Performance Measure and Client Outcomes") and the Local Agency's fiscal operations described in Parts IV through VI ("Contract Costs, Billing and Payment Information," "Cost Accounting Principles and Financial Reports," and "Budgeting Principles and Forms"). Performance monitoring may include both announced and unannounced visits.
2. **REVIEW OF LOCAL AGENCY'S REPORTS AND BILLS:** All billings and reports submitted by the Local Agency will be reviewed by DHS/DAAS at DHS/DAAS' discretion. DHS/DAAS may direct any inquiries regarding Local Agency's billings and reports to the Local Agency's Representative as follows:

Title: _____ Name (Optional): _____
Telephone: _____
Address: _____

3. **RECORD-KEEPING AND REPORTING REQUIREMENTS:** The Local Agency shall comply with all record-keeping and reporting requirements of this Contract, including the requirements set out in the attachments to this Contract. In addition, the Local Agency shall maintain or shall supervise the maintenance of all records necessary for the proper and efficient operation of the programs covered by this Contract, including records relating to applications, determination of clients' eligibility (if applicable), the provision of services and administrative costs, and any other records, such as statistical and fiscal records, necessary for complying with the reporting and accountability requirements of this Contract.
4. **RETENTION AND DESTRUCTION OF RECORDS RELATED TO THIS CONTRACT:** The Local Agency shall retain all records related to this Contract for at least the following periods of time:

- a. **Administrative Records and Records Relating to Adult Clients:** The Local Agency shall retain all administrative records relating to this Contract and all adult client records (including records that support Title XIX reimbursements) for at least six (6) years after DHS/DAAS makes the last payment on this Contract, or six (6) years after the completion of any audits initiated within this six-year period, whichever period is longer.
- b. **Records Relating to Clients Who Are Minors:** The Local Agency shall retain all records relating to clients under 18 years old (including records that support Title XIX reimbursements) for at least six (6) years after DHS/DAAS makes the last payment on this Contract, or six (6) years after the completion of any audits initiated within this six-year period, or until the child client reaches the age of twenty-two (22), whichever period is longest.
- c. **Protecting DHS' Continuing Access Rights to Contract-Related Records:** The Local Agency acknowledges that DHS/DAAS is entitled to have ready access to all records relating to this Contract, and the Local Agency shall not do anything to limit or interfere with DHS/DAAS' access rights, except as expressly provided by law. DHS/DAAS and the Local Agency acknowledge, however, that entities other than DHS/DAAS may also have access rights to the records, especially if those entities provided part of the funding for the programs or services covered by this Contract.
 - (1) **Permission for Early Destruction of Records:** The Local Agency shall not destroy or relocate any records relating to this Contract or the services provided under this Contract for the six-year period defined in subsections (a) and (b) of this Paragraph ("Retention and Destruction of Records Related to This Contract"), unless the Local Agency gives DHS/DAAS thirty days written notice and obtains DHS/DAAS' prior written consent to the proposed destruction or relocation of the records. (As used in this Paragraph, the term "relocate" means to move the records to a site which is not either the site where the Local Agency provides the services under this Contract or a site operated by the Local Agency in the geographic area covered by this Contract.) As a condition of consenting to the Local Agency's the early destruction or relocation of the records, DHS/DAAS may require the Local Agency to provide DHS/DAAS with photocopies of the records, and the Local Agency shall pay for the costs of photocopying the records, or the Local Agency shall deliver the originals to DHS/DAAS at the Local Agency's own expense.
 - (2) **Alcohol and Drug Abuse Patient Records - Discontinued Operations:** Notwithstanding the provisions of subparagraph (1) above, the parties acknowledge that if the Local Agency provides alcohol or drug abuse diagnosis, treatment or referral services under this Contract and obtains information for the purpose of providing such services, the Local Agency and DHS/DAAS are bound by the requirements of 42 C.F.R. Part 2 ("Confidentiality of Alcohol and Drug Abuse Patient Records"). Therefore, if the Local Agency discontinues its alcohol or drug abuse program or ceases

to provide such services under this Contract, the Local Agency shall protect DHS/DAAS access rights by implementing one of the following three options:

- (a) Transfer the patient records to a successor agency or entity which has:
 - (i) entered into a contract with DHS/DAAS to provide such services formerly provided by the Local Agency;
 - (ii) agreed to provide DHS/DAAS with the same access to the records as required under the Local Agency's contract with DHS/DAAS; and
 - (iii) obtained the patients' written consent to the transfer of the records, pursuant to 42 C.F.R. § 2.19 (which governs the disposition of records by discontinued programs); or
 - (b) Deliver the patient records to the State Archives or an office within the Local Agency under an arrangement by which the Local Agency authorizes DHS/DAAS to have continuing ready access to the records; or
 - (c) Transfer the records to DHS/DAAS under an arrangement that complies with one or more of the following federal regulations: 42 C.F.R. § 2.53(b) (which governs access by auditors and evaluators); 42 C.F.R. § 2.11 (which allows access pursuant to a "qualified service organization agreement"); or 42 C.F.R. § 2.33 (which allows disclosure with the patient's written consent).
- d. **Method for Destruction of Patient Records:** If the Local Agency maintains any client records under this Contract, and if this Contract or the DHS retention schedule indicates that such client records are to be destroyed after a certain period of time, the Local Agency shall shred or burn the records to protect client confidentiality. In the case of electronic records, the Local Agency shall use a technique of destroying the records that adequately prevents unauthorized persons from reading or accessing the records. If the Local Agency is unsure whether a particular technique will adequately destroy the electronic records, the Local Agency shall consult with DHS/DAAS and its technical specialists before using that technique.

5. **PROTECTING THE CONFIDENTIALITY OF CLIENT RECORDS:**

- a. **Client Records Are Generally Confidential.** If the Local Agency maintains any client records in connection with the services provided under this Contract, the Local Agency shall comply with this Paragraph. The Local Agency acknowledges that client records are generally considered confidential and that depending upon the content of such records, access may be restricted under state and federal laws, including the Public Health Service Act (which classifies alcohol abuse, substance abuse and mental health patient records in federally assisted programs as

confidential; *See* 42 U.S.C. § 290dd-2, 42 C.F.R. § 2.1 *et seq.*, and other similar provisions); the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (which establishes standards to protect the privacy of health information maintained by health plans, health care clearinghouses and health care providers who transmit health information in electronic form; *See* Public L. 104-191 (1996) and 45 CFR Parts 160, 162 and 164); and the Utah Government Records Access and Management Act ("GRAMA": Title 63, Chapter 2 of the Utah Code).

- b. **Security Precautions for Client Records.** To preserve the integrity and confidentiality of client records, the Local Agency shall maintain all client records in locked rooms or cases. Except with the express written consent of the client, the Local Agency shall not use any client information for purposes not directly connected with the responsibilities or services under this Contract, and the Local Agency may disclose client information only as provided by this Contract, as authorized by the client in writing, or as required by law. The Local Agency's staff shall have access only to those portions of the records directly related to their work assignments.
6. **GENERAL ACCESS TO THE LOCAL AGENCY'S RECORDS:** The Local Agency shall provide DHS/DAAS with ready access to any records produced or received by the Local Agency in connection with the services or programs provided under this Contract, unless such access is expressly prohibited by state or federal law. The Local Agency acknowledges that some of its records, including this Contract, may be available to the public and to the Local Agency's clients pursuant to GRAMA and other state and federal laws, including the federal "Protection and Advocacy for Individuals with Mental Illness Act," 42 U.S.C. §§ 10801 *et seq.* Therefore, upon receiving a request for records or information from any individual or entity other than DHS/DAAS, the Local Agency shall immediately notify DHS/DAAS about the request. However, if the Local Agency receives a written request from the client or from a person or entity (such as a client's insurance provider) authorized by the client in writing to have access to the client's records, the Local Agency may release the requested records without first notifying DHS/DAAS if such release is consistent with the record classification, governing law and ethical practices. Except as otherwise directed by DHS/DAAS or authorized by this Paragraph (6), the Local Agency's non-governmental subcontractors and any Local Agency or governmental subcontractor that lacks expertise in responding to GRAMA requests shall consult with DHS/DAAS before responding to a record request to determine the appropriate response under this Contract and federal and state laws, including GRAMA. In such circumstances, if the requested records come within the scope of GRAMA and if DHS/DAAS so requests, the Local Agency shall deliver copies of the requested records to DHS/DAAS, and allow DHS/DAAS to respond directly to the records-request.
7. **AUDITORS' AND MONITORS' ACCESS TO THE LOCAL AGENCY'S RECORDS:** Upon request, the Local Agency shall allow independent, state and federal auditors or contract reviewers to have access to any records related to this Contract, including all financial records (such as accounting records and supporting documentation) for audit review and inspection. (*See, e.g.,* 42 C.F.R. § 2.53, "Confidentiality of Alcohol and Drug Abuse Patient Records," which allows inspection of records for auditing and contract performance purposes.) In addition, the Local Agency shall comply with all records-access

provisions set forth in Parts IV, V and VII of this Contract ("Contract Costs, Billing and Payment Information," "Cost Accounting Principles and Financial Reports," and "Summary of Some Commonly-Applicable Laws and Policies").

8. **NOTIFICATION OF THE INTERNAL REVENUE SERVICE:** The Local Agency understands that it is DHS policy to notify the Internal Revenue Service if DHS suspects that a Local Agency has violated IRS regulations or statutes.

SECTION E: CONTRACT MODIFICATIONS AND DISPUTE RESOLUTION PROCEDURES

1. SUBCONTRACTS:

- a. **Definition of "Subcontractor":** As used in this Contract, the term "subcontractor" means an individual or entity that has entered into an agreement with the Local Agency to perform the services or provide the goods for which that Local Agency is responsible under the terms of this Contract. Notwithstanding the foregoing, the term "subcontractor" also refers to individuals or entities that have entered into agreements with any subcontractor if: (1) those individuals or entities have agreed to perform all or most of the subcontractor's duties under this Contract; or (2) federal law requires this Contract to apply to such individuals or entities.
- b. **Local Agency May Subcontract.** The Local Agency may enter into subcontracts with other individuals or entities to provide the services required by this Contract and other state and federal laws.
- c. **When Subcontracting Is Allowed:** If Contractor is allowed to subcontract under paragraph 1.b. above, the following provisions apply:
 - (1) **Duties of Subcontractors:** Regardless of whether a particular provision in this Contract mentions subcontractors, a subcontractor must comply with all provisions of this Contract, including the state procurement requirements (or the equally-stringent county procurement requirements), insurance requirements and the fiscal and program requirements. The Local Agency retains full responsibility for contract compliance, whether the services are provided directly or by a subcontractor.
 - (2) **Provisions Required in Subcontracts:** If the Local Agency enters into any subcontracts with other individuals or entities pursuant to subsection (b) above, and pays those individuals or entities for such goods or services through federal and state funds, the Local Agency shall include provisions in its subcontracts regarding the federal and state laws identified in this Contract (Part I, Section C, "Local Agency's Compliance with Applicable Laws;" Part IV, "Contract Costs, Billing and Payment Information;" Part V, "Cost Accounting Principles and Financial Reports;" and Part VII, "Summary of Some Commonly-Applicable Laws and Policies"), as well as other laws and contract provisions identified in 45 C.F.R. § 92.36(i), "Uniform

Administrative Requirements for Grants and Cooperative Agreements to
State and Local Governments.”

2. **CONTRACT ASSIGNMENT:** The Local Agency may not assign its benefits and obligations under this Contract to any other entity, but if DHS/DAAS gives its prior written consent, the Local Agency may subcontract for the administration of services under this Contract as allowed by Utah law.
3. **CONTRACT RENEGOTIATIONS OR MODIFICATIONS:** The parties may amend, modify or supplement this Contract only by a written amendment signed by the parties and approved by the DHS Bureau of Contract Management. The amendment shall be attached to the original signed copy of this Contract. DHS/DAAS shall not pay for any services provided by the Local Agency unless such payments are specifically authorized by this Contract or an approved written amendment to this Contract.
4. **CONTRACT TERMINATION:**
 - a. **Right to Terminate Upon Thirty Days Notice.** Either party may terminate this Contract, with or without cause, in advance of the Contract's expiration date by giving the other party at least thirty (30) days written notice.
 - b. **Immediate Termination.** In addition, if the Local Agency's violation of this Contract creates or is likely to create a risk of harm to the clients served under this Contract, or if any other provision of this Contract (including any provision in the attachments) allows DHS/DAAS to terminate the Contract immediately for a violation of that provision, DHS/DAAS may terminate this Contract immediately by notifying the Local Agency in writing.
 - c. **Cooperative Efforts to Protect the Clients.** If either party elects to terminate this Contract, both parties will use their best efforts to provide for uninterrupted client services.
 - d. **Processing Payments and Records Access After Termination.** Upon termination of the Contract, the parties shall use the financial and accounting arrangements set forth in this Contract to process the accounts and payments for any services that the Local Agency rendered before the termination. In addition, the Local Agency shall comply with the provisions of this Contract relating to the Local Agency's record-keeping responsibilities, and shall ensure that the Local Agency's staff properly maintains all records (including financial records and any client treatment records).
 - e. **Attorneys' Fees and Costs.** If either party seeks to enforce this Contract upon a breach by the other party, or if one party seeks to defend itself against liability arising from the negligence of the other party, the prevailing party shall receive from the unsuccessful party all court costs and its reasonable attorneys' fees, regardless of whether such fees are incurred in connection with litigation.
 - f. **Remedies for Local Agency's Violation.** The Local Agency acknowledges that if the Local Agency violates the terms of this Contract, DHS/DAAS is entitled to avail

itself of all available legal, equitable and statutory remedies, including money damages, injunctive relief and debarment as allowed by state and federal law.

5. **GRIEVANCE PROCEDURES FOR CLIENTS AND APPLICANTS:** The Local Agency shall establish a grievance system for the clients and applicants of the programs covered by this Contract, and shall notify each client and applicant in writing that:
- a. Clients and applicants have the right to present the Local Agency with their grievances about:
 - (1) denial of services covered by this Contract;
 - (2) exclusion from a program covered by this Contract; or
 - (3) inadequacies or inequities in the programs and services provided under this Contract; and
 - b. If the Local Agency denies a grievance request about the services provided under this Contract or if the Local Agency fails to respond to a grievance in a timely fashion, the client or applicant may contact, in writing, DHS/DAAS' Representative listed on the front page of this contract. The Representative will attempt to resolve the grievance. If the client or applicant is dissatisfied with the Representative's response, the client or applicant may file a written appeal to the Director of DHS/DAAS, and the Director shall respond to the appeal in writing within 30 working days. If the applicant or client is dissatisfied with the Director's decision, the client or applicant may request a hearing before the DHS Office of Administrative Hearings ("OAH"). This hearing request must be filed with OAH within ten (10) working days of receiving the DHS/DAAS Director's written decision. If OAH finds that the client or applicant's request is supported by applicable law, OAH may order the Local Agency or DHS to remedy the problem addressed in the grievance.
6. **CONTRACT DISPUTES - COMPLAINT AND APPEAL PROCESS:** If the Local Agency wishes to challenge any procurement issues related to this Contract, such challenges are governed by the Utah Procurement Act, Utah Code Ann. § 63-56-1 *et seq.*

The Local Agency may appeal from any *non*-procurement contract disputes with DHS/DAAS by filing a written appeal with the DHS Deputy Director for Support Services within thirty (30) days of the disputed DHS/DAAS action or decision. The Local Agency's written appeal shall identify the Local Agency, the contract number, the disputed issue, pertinent contract provisions or legal authorities, and the contact person for the Local Agency. The Local Agency shall also provide a copy of the written appeal to the Director of DHS/DAAS.

The DHS Deputy Director shall have ten (10) working days to issue DHS' written response to the Local Agency's appeal. The Deputy Director may designate another DHS employee to review and respond to the Local Agency's appeal. If the Local Agency is not satisfied with the response of the Deputy Director, the Local Agency may pursue those remedies

available to it in a court of appropriate jurisdiction, subject to the rules and regulations applicable therein.

PART II: SCOPE OF WORK AND SPECIAL CONDITIONS

DESCRIPTION OF THE SERVICES OR SUPPORTS TO BE PROVIDED UNDER THIS CONTRACT.

In completing this part of the Contract, state in detail the resources the Local Agency must have and what the Local Agency must do (performance criteria) to successfully provide or complete the services or supports required by this Contract. When the Contract is the result of a Request for Proposal ("RFP"), the performance criteria identified must be consistent with the criteria in the RFP and/or any amendments to the RFP. When applicable, the performance criteria must also be consistent with the criteria used by DHS in setting the rate of payment for the type(s) of service to be provided by the Local Agency. The description of the performance criteria the Local Agency must meet must be detailed enough to allow DHS/_____ or DHS to effectively monitor the Local Agency's performance.

*Is this service or support a **Residential Program**?*

Select ONE of the following:

☐ *Yes?*

If yes is marked above, the Description of the Services or Supports must state whether or not the Local Agency may receive payment for client absences. If the Local Agency may receive payment for client absences, the conditions under which such payments will be made must be clearly outlined (e.g. required documentation, limit on number of absences, written approvals)

☐ *No?*

*(For more detailed instructions on how to complete this part of the contract, please refer to the **Monitoring Handbook for Performance Based Contracts**.)*

PART III: PERFORMANCE MEASURES AND CLIENT OUTCOMES

The Local Agency shall comply with the following Performance Measures and Client Outcomes requirements:

Instructions: *This Contract must include specific objectives (goals) for both the Local Agency's service, support, or project, and, when applicable, the individual clients the Local Agency serves. DHS/_____ may work with the Local Agency in developing these objectives. The objectives included in the contract must be based upon observable and measurable behavior that is time-limited and has clear criteria for success.*

1. Program Performance Objectives.

The first step in developing program performance objectives is to identify program performance measures. Program performance measures answer the question: "How well is the agency or program service delivery working?" These measures focus on the intended performance of the Local Agency and indicate the extent to which the Local Agency is meeting its short and long-term goals. Although program performance measures encompass contract compliance, their scope is much broader than compliance alone. Their purpose is to assess both program implementation and program impact in order to improve program planning and monitor program development. Program performance measures might include topics such as "protecting the community" or "family preservation".

Once appropriate program performance measures have been identified, specific program performance objectives designed to define and quantify the identified measures can be developed. For example, a program performance objective related to a measure of protecting the community might be "5% fewer clients will go AWOL in the current year than in the previous year." AWOLs is one way to define what "protecting the community" means. AWOLs are also measurable so long as appropriate data is maintained and this fact allows one to assess progress toward the stated objective.

(For more detailed instructions on how to complete this part of the contract, please refer to the Monitoring Handbook for Performance Based Contracts.)

- 2. Client Centered Objectives.** Whenever a program or service covered by this Contract requires the development of client treatment plans, the treatment plans must include individualized treatment objectives that address the assessed needs of the client. The treatment plans must prescribe an integrated program of therapies, activities, and experiences to meet the client's treatment objectives and include reasonable measures to evaluate whether the client's treatment objectives are met.
- 3. Customer or Client Satisfaction Surveys:** The Local Agency understands that DHS is committed to providing client-oriented services, and that DHS and DHS/DAAS often conduct client-satisfaction surveys to ensure that services are appropriate for the clients served. The Local Agency and/or its subcontractor therefore agree to cooperate with all DHS and DHS/DAAS-initiated client or customer feedback activities.

PART IV: CONTRACT COSTS, BILLING AND PAYMENT INFORMATION

1. LOCAL AGENCY'S SPECIFICS:

- a. Billing name and address of the Local Agency:
- _____
- _____
- _____
- b. IRS number: _____
- c. Telephone number: _____
- d. Address/location where the services will be provided:
- _____
- _____
- _____
- e. Name and address of the entity or individual preparing Local Agency's audit report or financial statement:
- _____
- _____

2. **CONTRACT PAYMENT:** This Local Agency Contract is a Pass-Through Contract. DHS/DAAS' payment of pass-through funding to the Local Agency is based on supporting documentation from the Local Agency showing that the service costs were necessary, reasonable and actually incurred by the Local Agency in providing the services required by this Contract. The line item allocations for services under this Contract are specified in the following table:

Service Name	Service Code	Reimbursement Maximum
TOTAL		

3. **METHOD AND SOURCE OF PAYMENTS TO THE LOCAL AGENCY:** To obtain payment for the services provided under this Contract, the Local Agency shall submit to DHS/DAAS, on a monthly basis, an itemized billing for its authorized services, together with supporting documentation required by the appropriate billing form supplied by DHS/DAAS. DHS/DAAS shall then reimburse the Local Agency by a warrant drawn against DHS or the State of Utah. The Local Agency shall bill DHS/DAAS only for actual costs allowable under the federal and DHS cost principles referred to in Part V ("Cost Accounting Principles and Financial Reports"), and the Local Agency shall maintain records that adequately support the allowability of these costs.

a. **Billing Forms:** DHS Form 1032a (to be used by area agencies on aging).

b. **Other Instructions:**

4. **UNIFORM BILLING PRACTICES:** Local Agency guarantees that the amounts it charges for services to clients under this Contract shall not be higher than the amounts the Local Agency charges others for comparable services.

5. **BILLING DEADLINES:** The Local Agency shall submit all billings and claims for services rendered during a given billing period within twenty (20) days after the last date of that billing period. All final billings under a contract must be received within twenty (20) days of termination of the contract, regardless of the billing period. If the Local Agency fails to meet these deadlines, DHS/DAAS may deny payment for such delayed billings or claims for services.

The State Fiscal Year is from July 1 through June 30. The Local Agency shall submit all billings for services performed on or before June 30th of a given fiscal year no later than July 20th of the following fiscal year, regardless of the termination date of the contract. DHS/DAAS may delay or deny payment for services performed in a given fiscal year if it receives the Local Agency's billing for those services later than July 20th of the following fiscal year.

6. **MATCHING FUNDS:** *(Applies only to DHS/DAAS contracts which require the Local Agency to provide matching funds.)*

The Local Agency shall provide the following "match" (***check all that apply***):

- ☐ In-kind services valued at \$_____.
- ☐ Cash in the amount of \$_____.

7. **NON-FEDERAL MATCH:** For those contracts requiring a non-federal match, that match shall comply with the provisions of Title 45 of the Code of Federal Regulations, Part 74, Sub-part G. Other funding sources may require different non-federal match amounts, as shown in Paragraph 6 of this Part IV ("Contract Costs, Billing and Payment Information").

8. **OVERPAYMENTS, AUDIT EXCEPTIONS AND DISALLOWANCES:** If an independent CPA audit or a fiscal review by DHS determines that DHS/DAAS has over-paid the Local Agency for services under this Contract because: (a) the Local Agency's expenditures under this Contract are ineligible for reimbursement as they were not authorized by this Contract; or (b) the Local Agency's expenditures are inadequately documented, the Local Agency shall immediately refund such excess payments to DHS/DAAS upon written request. Furthermore, DHS/DAAS shall have the right to withhold any or all subsequent payments under this or other contracts with the Local Agency until DHS/DAAS fully recoups any overpayments made to the Local Agency.
9. **PAYMENT WITHHOLDING:** DHS/DAAS may withhold funds from the Local Agency for contract non-compliance, failure to comply with DHS/DAAS directives regarding the use of public funds, misuse of public funds or monies, or failure to comply with state and federal law or policy in the Local Agency's subcontracts with private providers. If an audit finding or judicial determination is made that the Local Agency or its subcontractor misused public funds, DHS/DAAS may also withhold funds otherwise allocated to the Local Agency to cover the costs of any audits, attorney's fees and other expenses associated with reviewing the Local Agency's or the subcontractor's expenditure of public funds. DHS/DAAS shall give the Local Agency prior written notice that the payment(s) will be withheld. The notice shall specify the reasons for such withholding and the actions that the Local Agency must take to bring about the release of any amounts withheld.

PART V: COST ACCOUNTING PRINCIPLES AND FINANCIAL REPORTS

SECTION A: COST ACCOUNTING PRINCIPLES

1. **LOCAL AGENCY'S COST ACCOUNTING SYSTEM:** Local Agency agrees to maintain a financial and cost accounting system in accordance with the Generally Accepted Accounting Principles ("GAAP"), issued by the American Institute of Certified Public Accountants; or the "Governmental GAAP," issued by the United States Governmental Accounting Standards Board. An entity's accounting basis determines when transactions and economic events are reflected in its financial statements. An entity may record its accounting transactions and events on a cash basis, accrual basis, or modified accrual basis. In the cash basis of accounting, the entity recognizes its revenues and expenditures as cash is received. The accrual basis of accounting is concerned more with the process by which cash expended on resources and activities is returned as more (or perhaps less) cash to the enterprise, not just with the beginning or end of that process. The accrual basis includes the elements of deferral of costs, amortization and depreciation. The modified accrual basis is a mixture of both cash and accrual basis concepts. According to GAAP and Governmental GAAP, the cash method of accounting is not appropriate for governmental entities; the accrual basis and modified accrual basis of accounting are the preferred methods.

At a minimum, the Local Agency's accounting system shall provide for a General Ledger, and cost accounting records adequate to assure that costs incurred under this Contract are reasonable, allocable to contract objectives, and separate from costs associated with other business activities of the Local Agency.

2. **REQUIRED DOCUMENTATION:** Local Agency agrees that all program expenditures and revenues shall be supported by reasonable documentation (such as vouchers, invoices, and receipts) which the Local Agency shall store and file in a systematic and consistent manner. Local Agency shall maintain all such records until six years after all audits initiated by federal and state auditors are completed, or for six (6) years from the date of termination of this Contract, whichever is longer.
3. **APPLICABLE COST PRINCIPLES:** The Local Agency shall comply with the Federal Cost Accounting Principles applicable to the Local Agency's type of business organization regardless of the source of contract funding. 'For-profit' organizations are required to follow the Federal Cost Accounting Principles for 'non-profit' organizations.
 - a. Federal Cost Principles determine allowable costs in DHS contracts. They can be found in circulars published by the Federal Office of Management and Budgets ("OMB"). The Local Agency may locate the Federal Cost Principles applicable to its organization at the internet web site:

OMB Circulars: <http://www.whitehouse.gov/omb/circulars/index.html>

- b. In addition to complying with Federal Cost Accounting Principles, the Local Agency must also comply with established DHS Cost Accounting Principles. Local

Authorities may obtain a copy of the DHS Cost Principles by contacting the DHS Bureau of Contract Management, 120 North 200 West #213, Salt Lake City, Utah 84103, or by accessing the DHS Bureau of Contract Management web site, currently at the following address:

http://www.dhs.utah.gov/pol_reports.htm (select “*Bureau of Contract Management*”; select “*Contract Manual*”; select “*Section XII - DHS Cost Principles*”)

For the Local Agency’s convenience, DHS provides Table 1 below, “Cost Accounting Principles,” as a reference guide to the applicable cost principles. However, the information in this table is not exhaustive, and the Local Agency understands that it is obligated to seek independent legal or accounting advice.

As shown in Table 1, “Cost Accounting Principles,” the principles applicable to a particular contractor depend upon the contractor’s legal status.

Table 1: Cost Accounting Principles

Contractor	Federal Cost Principles	DHS Cost Accounting Principles
State or Local Govt. & Indian Tribal Govts.	OMB Circular A-87	Applies to all contractors. <i>See</i> above web site.
Hospital	45 C.F.R. 74, App. E	Applies to all contractors. <i>See</i> above web site.
College or University	OMB Circular A-21	Applies to all contractors. <i>See</i> above web site.
Non-Profit Organization	OMB Circular A-122	Applies to all contractors. <i>See</i> above web site.
For-Profit Organization	OMB Circular A-122	Applies to all contractors. <i>See</i> above web site. (Note: DHS Cost Principles require for-profit contractors to apply the cost principles established by OMB Circular A-122.)

4. **SERVICE CODE COST SUMMARY:** Upon request, the Local Agency shall submit to DHS/DAAS actual cost expenditures and specific service codes for the services provided by the Local Agency under this Contract. If DHS/DAAS wishes to review the Local Agency's records and programs, DHS/DAAS may request cost data as early as ninety-one (91) days after completion of the prior contract period. If the Local Agency fails to submit the Cost Summaries within twenty (20) working days from the date of DHS/DAAS' request, DHS/DAAS may withhold payments on this or subsequent contracts with the Local Agency until the Local Agency submits the requested Cost Summaries. The Service Code Cost Summaries submitted by the Local Agency are subject to review by DHS/DAAS. Therefore, Cost Summaries shall agree in total (and in detail where possible) with any other financial information that the Local Agency submits to DHS/DAAS, including financial information such as audit reports, financial statements, and similar information. Cost Summaries which are inconsistent with other financial information submitted by the Local Agency may be

subject to further investigation by DHS/DAAS. The cost data shall be in the "Service Code Cost Summary" format provided by DHS/DAAS. The Local Agency shall report the costs in accordance with federal and DHS cost principles, identified in this Section A ("Cost Accounting Principles"), and shall include only "allowable" costs data in submitting data to DHS/DAAS. In addition, upon request by DHS, the Local Agency shall submit allowable cost data to DHS.

5. **PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA:** If any price, including any profit or fee, negotiated in connection with this Contract, or any cost reimbursable under this Contract, was increased by any significant sum because the Local Agency furnished cost or pricing data (such as service code cost summaries, salary schedules or reports of prior-period costs) which was inaccurate, incomplete, and out-of-date, the price or cost shall be reduced accordingly and the Contract shall be modified in writing as necessary to reflect such reduction, and any amounts which DHS/DAAS overpaid shall be subjected to overpayment assessments. Any action DHS/DAAS may take in reference to such price reduction shall be independent of, and not be prejudicial to, DHS/DAAS' right to terminate this agreement.

SECTION B: FINANCIAL REPORTING REQUIREMENTS

1. GENERAL REQUIREMENTS:

- a. **Definitions Used in this Part V ("Cost Accounting Principles and Financial Reports").** This Section B uses numerous accounting and financial terms. Section B (2) below sets forth the definitions for the most commonly-used terms, and Section B(4) below sets forth the definitions for additional terms used in this Section.
- b. **No Financial Reporting Requirements for Professionals Contracting in an Individual Capacity.** There are no federal, state, or DHS financial reporting requirements for individuals such as doctors, dentists, social workers, and other similar professionals contracting in an individual capacity to provide services to clients. Therefore, the financial reporting requirements discussed in this Section are not applicable to professionals contracting as individuals. (Note: Sole proprietors and limited liability companies owned by either one person or by a husband and wife are considered individuals for reporting requirement purposes. However, individuals associated with corporations, partnerships, or other contracting organizations are not individuals for reporting requirement purposes.)

Notwithstanding the lack of financial reporting requirements for individuals, contractors providing services in an individual capacity are still subject to financial review by the contracting agency and/or another DHS entity

- c. **No Financial Reporting Requirements for Contracting Organizations Receiving Less Than \$10,000 From DHS in a Single Fiscal Year.** Contracting organizations that receive less than \$10,000 from DHS in a single fiscal year have no financial reporting requirement to DHS. However, they are still subject to financial review by the contracting agency and/or another DHS entity.

- d. **Financial Reporting Requirements for Out-of-State Organizations.** The financial reports of out-of-state organizations providing services to DHS clients outside the State of Utah will be accepted as submitted without regard to the financial reporting requirements applicable to in-state organizations. However, if the out-of-state organization is providing services to DHS clients in the State of Utah via a Utah based subsidiary, division, unit, or other entity included in the out-of-state organization's financial report, a separate **Statement of Functional Expenses** for the Utah based entity must accompany the report. If the Utah based entity is not included in the out-of-state organization's financial report, the same financial reporting requirements apply to the Utah based entity as apply to other in-state organizations.
- e. **Local Agency's Compliance with Applicable Financial Laws.** The Local Agency shall comply with all applicable federal and state laws regarding financial reports. The Local Agency shall comply with all applicable requirements set forth in: (1) OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," published by the federal government; and (2) the State of Utah Legal Compliance Audit Guide ("SULCAG"), issued by the State Auditor's Office. For the Local Agency's convenience, DHS has prepared Table 2 below, "Federal, State and DHS Financial Reporting Requirements," as a reference guide to the various financial reporting requirements. The information in this table is not exhaustive and the Local Agency understands that it is obligated to seek independent legal or accounting advice. Local Agency may access the applicable federal and state financial reporting requirements through the following Internet web sites (current as of December 2003):
- (1) **OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations:** <http://www.whitehouse.gov/omb/circulars/index.html>
 - (2) **Utah Code:** http://www.le.utah.gov/~code/TITLE51/51_01.htm
 - (3) **Utah Administrative Rules:**
<http://www.rules.utah.gov/publicat/code/r123/r123-005.htm>
 - (4) **SULCAG:** <http://www.sulcag.sao.utah.gov/Introduction.htm>
- f. **Additional Financial Reporting Requirements for DHS Contracts:** In addition to the financial reporting requirements set forth in OMB Circular A-133 and the SULCAG, this DHS Contract requires the Local Agency to submit various financial reports to the DHS Bureau of Contract Management ("BCM"), as set forth in a separate column in Table 2 below, "Federal, State and DHS Financial Reporting Requirements."
- g. **The Entity Type and the Amount and Source of Government Funds Determines the Type of Financial Report Required.** Whether or not a contractor is required to obtain and submit an annual audit or other financial reports is determined by the contractor's entity type and the amount and source of government funds that the

contractor expends during a given year. For example, if the contractor is a Non-profit Organization and is a Subrecipient that expends \$500,000 or more in federal funds during a given year, the contractor is required by federal law to obtain and submit a Single Audit or Program-Specific Audit, as described in OMB Circular A-133.200. However, if that same contractor expended *less* than \$500,000 in federal funds in a given year, the contractor would be exempt from *federal* auditing requirements under OMB Circular A-133.200(d), yet still be subject to *State* auditing requirements such as those established under state statute (*e.g.*, Utah Code Ann. § 51-2a-201 *et seq.*: "Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities"), administrative rules promulgated by the State Auditor's Office (*see* Utah Admin. Code R. 123-5-1), and the SULCAG, issued by the State Auditor's Office.

Based on the SULCAG, DHS requires all contractors except sole proprietorships to submit an audit prepared according to "government auditing standards" whenever the contractor has \$350,000.00 or more in total revenues and 50% or more of those revenues come from government agencies (federal, state, county, and/or local, etc.). Unaudited reports may be required of contractors with total revenues under \$350,000.00 (see Table 2 below "Federal, State and DHS Financial Reporting Requirements").

- h. **Questioned Costs.** DHS may consider any unit of service billed by the Local Agency to be a questioned cost if the unit of service billed is not supported by proper documentation verifying it was actually provided. DHS may seek recovery of questioned costs from the Local Agency.
- i. **Changes in Federal or State Financial Reporting Requirements.** If Federal or State financial reporting requirements change during the course of the contract period, DHS/DAAS may advise the Contractor of the changes via written notice signed by an authorized representative of DHS/DAAS. The notice shall specifically identify the new reporting requirement(s) and the effective date of the same. A notice issued pursuant to this paragraph shall constitute an amendment of the contract under Part I, Section E, paragraph 3, without the Contractor's signature.

2. **DEFINITIONS FOR AUDITING AND FINANCIAL TERMS USED IN THIS CONTRACT:**

- a. **"Federal Funds"** means Federal financial assistance that a contractor receives directly from Federal awarding agencies or indirectly from Pass-Through Entities. **NOTE: For purposes of this Part V, Medicaid funds are not considered to be "Federal Funds."**
- b. **"Government Funds"** means financial assistance that a contractor receives from a combination of government sources, including Federal awarding agencies, State appropriations and other local governments.
- c. **"OMB"** means the federal Executive Office of the President, Office of Management and Budget.

- d. **"OMB Circular"** means a publication issued by the OMB that sets forth federal cost accounting or auditing requirements.
- e. **"Pass-Through Entity"** means an entity (such as DHS/DAAS) which receives federal funds and then passes those funds through to Subrecipients, such as local governments and Non-Profit Organizations.
- f. **"Service Provider"** means a private or governmental entity that receives funds from DHS/DAAS for services provided to DHS/DAAS' clients under a program developed by DHS/DAAS.
- g. **"Subrecipient"** means a governmental entity or a non-profit or for-profit organization that develops and operates its own program of services for eligible clients, and that receives federal and/or state funds from DHS/DAAS or another entity which serves as a "recipient" and "Pass-Through Entity" for such federal funding. If the Local Agency operates its own program of services for eligible clients, the Local Agency shall comply with the financial record-keeping and reporting requirements that apply to federally-funded subrecipients, even if this Contract is funded solely by *State* funds.
- h. **Additional definitions** to certain terms used in this Part V are provided in subsection B(4) below.

3. **LOCAL AGENCY'S SUBMISSION OF REQUIRED AUDITS AND OTHER FINANCIAL REPORTS:**

- a. **Deadlines:** The Local Agency shall be bound by OMB Circular A-133 and the SULCAG submission deadlines for audits and financial reports. *See also* Table 2 below, "Federal, State and DHS Auditing Requirements."

Where the Local Agency is required to submit audits and financial reports to DHS under OMB Circular A-133, the SULCAG and DHS contract provisions, and the Local Agency needs an extension for filing of such reports, the Local Agency may request an extension by contacting BCM at the address below. However, Local Agency understands that BCM can extend only those deadlines for reports Local Agency is required to submit to DHS. Local Agency must contact the Federal Clearinghouse, federal awarding agencies, and the State Auditor's Office to obtain extensions of deadlines for submission of reports to those entities.

- b. **Addresses:** The Local Agency shall submit all audits and financial reports to the entities identified in the applicable law, OMB Circular A-133 and the SULCAG. *See also* Table 2 below, "Federal, State and DHS Auditing Requirements."

Where the Local Agency is required to submit audits and financial reports to DHS under OMB Circular A-133, the SULCAG and DHS contract provisions, the Local Agency shall submit the required audits and financial reports to the following address:

**Department of Human Services
Bureau of Contract Management (BCM)
120 North 200 West, #213
Salt Lake City, UT 84103**

4. **ADDITIONAL DEFINITIONS USED IN THIS PART V:**

- a. **"Audit Findings"** means a schedule of all costs questioned by the auditor relative to Government Funds.
- b. **"Compliance Opinion"** means an auditor's opinion that Local Agency has complied with all applicable auditing laws and requirements. Utah Code Ann. § 51-2-3 .
- c. **"Federal Clearinghouse"** means the federal clearinghouse designated by the OMB. As provided in OMB Circular A-133.320(i), "the address of the Federal clearinghouse currently designated by OMB is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 4713."
- d. **"Financial Statements"** means financial reports of the Local Agency's accounting records for a given fiscal year, prepared by an independent accountant or employee of the Local Agency, including balance sheet, income and expense statement, statement of cash flows, the preparer's notes to the Financial Statements
- e. **"GAAP"** means Generally Accepted Accounting Principles, a combination of authoritative accounting principles, standards and procedures (set by policy boards). Usual statements in a financial statement include balance sheet, statement of income and expenses, statement of cash flows and notes to the financial statements.
- f. **"GAAS"** means Generally Accepted Auditing Standards, issued by the American Institute of Public Accountants (AICPA).
- g. **"GAS"** means Government Auditing Standards, issued by the Comptroller General of the United States, to be followed in audits of state and local governments and non-profit organizations that receive federal financial assistance. GAS is often referred to as Generally Accepted Government Auditing Standards ("GAGAS"). For financial statement audits, GAS/GAGAS incorporate the generally accepted standards issued by the AICPA.
- h. **"Management Letters"** means the auditor's notes and recommendations to the Local Agency's management personnel subsequent to a fiscal audit.
- i. **"Non-profit Organization"** means a corporation or foundation which: (1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; and (2) does not distribute any part of its income to its members, trustees, or officers.
- j. **"Program-Specific Audit"** means an audit of one specific federal program, using GAGAS standards, as described in OMB Circular A-133.200(c) and A-133.235.
- k. **"Reporting Package"** means the auditor's package of financial reports as defined in OMB Circular A-133, and shall include Financial Statements and Schedule of Expenditures of

Government Funds, Summary Schedule of prior audit findings, Auditor's report(s), and corrective action plan.

- l. **"SULCAG"** means the State of Utah Legal Compliance Audit Guide issued by the State Auditor's Office.
- m. **"Schedule of Expenditures"** means a break-down of expenditures of Government Funds for a given year, showing the total administrative expenses as compared to funds expended for program services.
- n. **"Single Audit"** means an audit which includes both the Local Agency's Financial Statements and the Federal awards using GAGAS standards, as described in OMB Circular A-133.500.
- o. **"Statement of Functional Expense"** means a breakdown of administration expenses and expenses attributed to actual program services on a program by program basis.
- p. **"Summary Schedule"** means a summary listing of all Audit Findings reported in the prior annual audit, and includes the Summary Schedule reported in the prior annual audit, except Audit Findings listed as corrected.

Table 2: Federal, State and DHS Auditing Requirements

Type of Entity	Amount of Annual Funding	Federal Audit and Reporting Requirements	State Audit and Reporting Requirements	DHS Contract Reporting Requirements	Submission Deadlines
Government Agency; OR Non-Profit Sub-recipient	\$500,000 or more expended in Federal Funds	<p>Single Audit or Program Specific Audit, using GAGAS standards.</p> <p>(OMB Circular A-133.200, A-133.235, and A-133.500)</p> <p><u>Financial Reports Required from Contractor:</u></p> <p>1. <u>Data Collection Form</u> as described in OMB Circular A-133.320 (a), (b) and (d) -to Federal Clearinghouse</p> <p>2. <u>Reporting Package</u>- to: (a) Federal Clearinghouse (b) Each federal awarding agency - if audit disclosed Audit Findings or reported the status of any Audit Findings in the Summary Schedule</p> <p>(OMB Circular A-133.320 (c) and (d))</p> <p>3. <u>Submission by Subrecipients:</u> (a) "Reporting Package" to each Pass-Through Entity when Audit Findings were disclosed relating to federal awards; (b) "Written Notification" to each Pass-Through Entity when no Audit Findings were disclosed and a Reporting Package was not required.</p> <p>(OMB Circular A-133.320(e)(1) and (e)(2))</p>	<p>Non-Profit Organizations that receive 50% or more of their funding from Government Funds AND all governmental agencies must submit the following audits and reports to the Utah State Auditor's Office:</p> <p>1. Copies of the entire <u>Single Audit or Program Specific Audit report</u></p> <p>2. The auditor's management letter, if the Single Audit or Program Audit report disclosed any Audit Findings.</p> <p>(The SULCAG provides that there are NO reporting or auditing REQUIREMENTS for Non-Profit Organizations that receive LESS THAN 50% of their total funding from Government Funds, regardless of the amount of funding.)</p>	<p>1. As required by OMB Circular A-133, both government and non-profit Contractors shall provide to DHS the following:</p> <p>a. <u>Reporting Package</u> - if audit disclosed Audit Findings or reported the status of any prior Audit Findings in the Summary Schedule; or</p> <p>b. <u>Written Notification</u> - if audit did not disclose Audit Findings or report on the status of any prior Audit Findings in the Summary Schedule; and</p> <p>2. This Contract also requires Contractor to submit the following:</p> <p>a. <u>Auditor's Management Letter</u>; and</p> <p>b. Upon request by DHS, (1) <u>entire Single or Program Specific Audit report</u>; and (2) <u>Reporting Package</u> (if not already required by OMB Circular A-133) (3) For non-profit contractors, the statement of Functional Expenses.</p>	<p>1. Thirty (30) days after Contractor receives the auditor's reports, or nine (9) months after end of fiscal year audited, whichever occurs first.</p> <p>(OMB Circular A-133.320)</p> <p>2. The above deadlines also apply to submission of Single Audit or Specific Audit reports required by the Utah State Auditor's Office and this DHS Contract.</p>

Type of Entity	Amount of Annual Funding	Federal Audit and Reporting Requirements	State Audit and Reporting Requirements	DHS Contract Reporting Requirements	Submission Deadlines
Government Agency; Non-Profit Sub-recipient; OR Non-Profit Service Provider	Less than \$500,000 expended in Federal Funds, but \$350,000 or more in total revenue	No audit required -- but records must be available for review or audit by Fed. Officials (OMB Circular A-133.200(d))	<p>All Non-Profit Organizations that receive 50% or more of their funding from Government Funds AND all governmental agencies must submit the following audits and reports to the Utah State Auditor's Office:</p> <p>a. Audited Financial Report using GAS/GAGAS (also know as "Yellow Book" standards.</p> <p>b The auditor's management letter, if the GAS/GAGAS "Yellow Book" report disclosed any Audit Findings.</p> <p><i>See Also</i> Utah Code Ann. § 51-2-3 regarding records to be included in the Audit Report, compliance with State law, test work requirements, Compliance Opinion and other compliance issues.</p>	<p>Government agencies and non-profit entities if 50% or more of the total funds received by non-profit Contractor are Government Funds:</p> <ol style="list-style-type: none"> 1. Copy of the Entire Audit Report required by the SULCAG; and 2. Auditor's Management Letter. 3. Statement of Functional Expenses. <p>IF LESS THAN 50% of total funds received by a non-profit Contractor are from Government Funds such that Contractor is not required by the SULCAG to submit any financial reports, DHS requires:</p> <ol style="list-style-type: none"> 1. <u>Unaudited CPA Review</u>; and 2. <u>Statement of Functional Expenses</u>. 	<p>Within six (6) months after end of Contractor's fiscal year</p> <p>Utah Code Ann. § 51-2-2</p>
	Less than \$350,000 , but \$200,000 or more in total revenue	NO REQUIREMENTS	<p>All Non-Profit Organizations that receive 50% or more of their funding from Government Funds AND all governmental agencies must submit the following reports to the Utah State Auditor's Office:</p> <p><u>Unaudited CPA Review.</u></p>	<p>Government agencies and non-profit entities (if 50% or more of the total funds received by non-profit Contractor are Government Funds):</p> <ol style="list-style-type: none"> 1. <u>Unaudited CPA Review</u>; and 2. <u>Statement of Functional Expenses</u> <p>IF LESS THAN 50% of total funds received by a non-profit Contractor are from Government Funds:</p> <ol style="list-style-type: none"> 1. Unaudited CPA Compilation; and 2. <u>Statement of Functional Expenses</u> 	<p>Within six (6) months after end of Contractor's fiscal year</p>
	Less than \$200,000 but \$100,000 or more in total revenue	NO REQUIREMENTS	<p>All Non-Profit Organizations that receive 50% or more of their funding from Government Funds AND all governmental agencies must submit the following reports to the Utah State Auditor's Office:</p> <p>Unaudited CPA Compilation</p>	<p>All Non-Profit Organizations that receive 50% or more of their total funding from Government Funds AND all governmental agencies:</p> <ol style="list-style-type: none"> 1. <u>Unaudited CPA Compilation</u>; and 2. <u>Statement of Functional Expenses</u> <p>IF LESS THAN 50% of the total funds received by a Non-Profit Organization are from Government Funds:</p> <ol style="list-style-type: none"> 1. <u>Unaudited Financial report prepared according to GAAP</u>; AND 2. <u>Statement of Functional Expenses</u> 	<p>Within six (6) months after end of Contractor's fiscal year</p>

Type of Entity	Amount of Annual Funding	Federal Audit and Reporting Requirements	State Audit and Reporting Requirements	DHS Contract Reporting Requirements	Submission Deadlines
	Less than \$100,000 but \$10,000 or more in total revenue	NO REQUIREMENTS	All Non-Profit Organizations that receive 50% or more of their funding from Government Funds AND all governmental agencies must submit the following reports to the Utah State Auditor's Office: Financial Information on the form approved by the State Auditor.	All contractors: Unaudited financial information, including, at a minimum: 1. <u>Balance sheet</u> ; and 2. <u>Income and Expenses Statement</u>	Within six (6) months after end of Contractor's fiscal year
All Contracting Entities	Less than \$10,000 received from DHS in the Fiscal Year	NO REQUIREMENTS	All Non-Profit Organizations that receive 50% or more of their funding from Government Funds AND all governmental agencies must submit to the Utah State Auditor's Office, financial information on the form approved by the State Auditor	NO REQUIREMENTS	Within six (6) months after end of Contractor's fiscal year
For-Profit Subrecipients; OR Service Providers	Based upon the same funding level breakdowns as above	NO REQUIREMENTS	NO REQUIREMENTS	The non-profit reporting requirements identified above also apply to for-profit contractors with the following exceptions: 1. The reporting format required of non-profit contractors is not required. 2. The Independent Auditor's Report on State Legal Compliance is not required. 3. The financial reports of foreign organizations (organizations located outside the State of Utah) shall be accepted as prepared. 4. Local subsidiaries or divisions of an outside organization shall submit a <u>statement of functional expenses</u> in addition to the parent organization's financial report.	Within six (6) months after end of Contractor's fiscal year

PART VI: BUDGETING PRINCIPLES AND FORMS

SECTION A: BUDGET REQUIREMENTS

If the Local Agency is an area agency on aging, the Local Agency shall include a budget in Part I, Section A, Paragraph 6 ("Funding Sources and Funding Reductions") and in Part IV, Paragraph 2 ("Contract Payment").

SECTION B: TRANSFERS BETWEEN FUNDING SOURCES

Upon approval by DHS/DAAS, in accordance with the Older Americans Act, Sections 308(b)(4)(A) and 308(b)(5)(A), and to better facilitate the Local Agency's ability to deliver services based upon need rather than funding source, the Local Agency may: 1) request a transfer of up to 40 percent of its allocated funds between Title III, Part C, subpart 1, Congregate Meals, and Title III, Part C, subpart 2, Home-Delivered Meals, as appropriate; and/or 2) request a transfer of up to 30 percent of its allocated funds between the programs under Title III, Part B, Supportive Services and Senior Centers, and Title III, Part C. Neither of the above-identified transfer requests shall increase the total amount of funding allocated to the Local Agency.

All requests for a transfer of funds pursuant to the above-identified paragraph shall be made in writing to DHS/DAAS. Requests shall identify the amount(s) to be transferred, the parts and/or subparts affected, the reason for the transfer(s), and the projected impact the transfer will have on services to the part and/or subpart losing funding.

DHS/DAAS will notify both the Local Agency and the DHS Bureau of Contract Management, in writing, when a transfer request is approved, including the total amount(s) transferred and the parts or subparts affected. The notice shall also include an update of the Local Agency's total allocated funding by part and subpart following the transfer(s).

PART VII: SUMMARY OF SOME COMMONLY- APPLICABLE LAWS AND POLICIES

SECTION A: COMPLIANCE WITH ADMINISTRATIVE GRANT REQUIREMENTS

The Local Agency is bound by federal law, which establishes various fiscal and administrative rules applicable to all entities that receive federal grant monies. These rules are published in OMB Circular A-110 and in the OMB Common Rule, which is codified in 45 C.F.R. Part 92 (1999) and 45 C.F.R. Part 74. *See* Section B for helpful web site addresses.

SECTION B: COMPLIANCE WITH GENERALLY APPLICABLE STATE AND FEDERAL LAWS

As noted in Part I ("General Provisions") of this Contract, the Local Agency is required to comply with all anti-discrimination and drug-free workplace laws, and all laws governing research involving human subjects. When the Local Agency receives state and federal funds under this Contract, certain state and federal requirements also apply, including the following federal laws: Equal Opportunity Employer Executive Order, the Davis-Bacon Act, the Hatch Act, the Copeland "Anti-Kickback" Act, the Fair Labor Standards Act, the Contract Work Hours and Safety Standards Act, the Clean Air Act, the Federal Water Pollution Control Act, the Byrd Anti-Lobbying Amendment, and the Debarment and Suspension Executive Orders. The Local Agency shall comply with these laws and regulations to the extent they apply to the subject matter of this Contract and are required by the amount of state and federal funds involved in this Contract.

For the Local Agency's convenience, DHS/DAAS provides Table 3, "Federal and State Laws and DHS Policies," as a reference guide to various laws and requirements. The information contained in this table is not exhaustive and the Local Agency understands that it is obligated to seek independent legal advice in these matters.

The Local Agency may locate the federal and state principles and requirements cited in this Section by accessing the following internet web sites (current as of December 2003):

- (a) **United States Code:** <http://uscode.house.gov/usc.htm>
- (b) **Code of Federal Regulations:** <http://www.access.gpo.gov/nara/cfr/index.html>
- (c) **Information About Public Laws, Executive Orders Of The President, And Other Federal Requirements:** <http://thomas.loc.gov>
- (d) **Utah Code:** <http://www.le.utah.gov/~code/code.htm>
- (e) **Utah Administrative Rules:** <http://www.rules.utah.gov/publicat/code.htm>
- (f) **DHS Policy Manual:** http://www.dhs.utah.gov/pol_reports.htm

Table 3: FEDERAL AND STATE LAWS AND DHS POLICIES

Description of Act	Summary of Law	Applicable Federal Law	Applicable State Law
Discrimination and Employment Related Laws			
Equal Employment Opportunity	Prohibits discrimination in all construction contracts and subcontracts in excess of \$10,000.	Exec. Order No. 11246 (1965), as amended by Exec. Order No. 11375; 41 C.F.R. Part 60	
The Civil Rights Act of 1964, Title VI	Prohibits discrimination on the grounds of race, color, or national origin, from participation in, or denial of benefits under any program or activity receiving federal financial assistance.	45 C.F.R. Part 80	
The Civil Rights Act of 1964, Title VII	Prohibits employers from discriminating against employees on the basis of race, color, religion, national origin, and sex. Applies to employers of fifteen or more employees, and prohibits all discriminatory employment practices.	Pub. L. No. 88-352 42 U.S.C. § 2000e <i>et seq.</i>	
Rehabilitation Act of 1973, Section 504	Prohibits discrimination against qualified handicapped individuals from participation in, or denial of benefits under any program or activity receiving federal financial assistance.	29 U.S.C. § 701 <i>et seq.</i> ; 45 C.F.R. Part 84	
Americans with Disabilities Act of 1990; Section 504 of the Rehabilitation Act of 1973	Prohibit discrimination on the basis of disability.	42 U.S.C. § 12101 <i>et seq.</i> ; 29 U.S.C. § 794; 28 C.F.R. Part 35, Part 39	
Education Amendments of 1972, Title IX	Prohibits discrimination on the basis of sex, from participation in, or denial of benefits under any educational program or activity receiving federal financial assistance.	20 U.S.C. §§ 1681-1683, and 1685-1686; 45 C.F.R. Part 86	
Age Discrimination Act of 1975	Prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.	42 U.S.C. §§ 6101-6107; 45 C.F.R. Part 91	
Public Health Service Act, Section 526	Prohibits discrimination in the admission or treatment of drug abusers who suffer from medical conditions. Applies to private or public general hospitals that receive support in any form from a federally funded program, and to outpatient facilities receiving or benefiting from federal financial assistance.	45 C.F.R. Part 84	
Public Health Service Act, Section 522	Prohibits discrimination in the admission or treatment of alcohol abusers and alcoholics who suffer from medical conditions. Applies to private or public general hospitals that receive support in any form from a federally funded program, and to outpatient facilities receiving or benefiting from federal financial assistance.	45 C.F.R. Part 84	

Description of Act	Summary of Law	Applicable Federal Law	Applicable State Law
Utah Civil Rights Act	Prohibits discrimination on the basis of race, color, sex, religion, ancestry, or national origin by any business establishment, place of public accommodation, or enterprise regulated by the State of Utah. <i>See also</i> Utah Anti-Discrimination Act.		Utah Code Ann. § 13-7-1 <i>et seq.</i>
Utah Antidiscrimination Act -- (Includes the prohibition of unlawful harassment)	Prohibits employers from refusing to hire or promote, or from discharging, demoting, terminating, retaliating against, harassing , or discriminating in matters of compensation or in terms, privileges, and conditions of employment against any person because of race; color; sex; pregnancy, childbirth, or pregnancy related conditions; age, if individual is 40 years or older; religion; national origin; or disability. An "employer" is defined as the state; any political subdivision; a board, commission, department, institution, school district, trust, or agent of the state or its political subdivisions; or anyone employing 15 or more employees within the state, except religious organizations.		Utah Code Ann. § 34A-5-101, <i>et seq.</i> (<i>See also</i> Utah Executive Order March 17, 1993, which prohibits sexual harassment of state employees and employees of public and higher education)
Utah Occupational Safety and Health Act	Requires employers to provide a place of employment free from recognized hazards that are causing or are likely to cause death or physical harm. An "employer" is defined as the state; each county, city, town, and school district in the state; and every person, firm, and private corporation including public utilities, having one or more workers regularly employed in the same business or establishment.		Utah Code Ann. § 34A-6-101, <i>et seq.</i>
Drug-Free Workplace Requirements	Prohibits the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the workplace, and permits drug testing of employees.	41 U.S.C. § 701 through 707, Drug Free Workplace Act of 1988	Utah Code Ann. § 34-41-101 <i>et seq.</i> ; Utah Code Ann. § 34-38-1 <i>et seq.</i> ; Utah Code Ann. § 67-19-36 <i>et seq.</i> ; Utah Admin. Code, R.477-14-1 <i>et seq.</i> ; and DHS Policy Manual, Policy No. 02-03.
Fair Labor Standards Act	Requires Contractor to comply with minimum wage requirements, child labor limitations, overtime limitations, and other labor standards.	29 U.S.C. § 201 <i>et seq.</i>	
Contract Work Hours and Safety Standards Act	Requires standard work week of 40 hours, and payment of overtime hours at time and a half. Applies to construction contracts awarded in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers.	40 U.S.C. §§ 327-333; 29 C.F.R. Part 5	
Davis-Bacon Act	Requires Contractor to pay laborers and mechanics minimum wages as determined by the Secretary of Labor --applies to construction contracts in excess of \$2,000.	40 U.S.C. § 276a through a-7; 29 C.F.R. Part 5	

Description of Act	Summary of Law	Applicable Federal Law	Applicable State Law
Copeland Anti-Kickback Act	Prohibits Contractor from inducing employees to give up any part of the compensation to which they are entitled. Applies to contracts and subgrants for construction or repair in excess of \$2,000.	18 U.S.C. § 874; 40 U.S.C. § 276(c); 29 C.F.R. Part 3	
Employment Eligibility Verification	Requires Contractor to comply with the Immigration and Naturalization requirement to maintain a signed copy of the I-9 Employment Eligibility Verification Form for each employee.	8 U.S.C. § 1324a	
Property Laws			
National Environmental Policy Act of 1969 ("NEPA")	Establishes national policy goals and procedures to protect and enhance the environment. NEPA applies to all federal agencies and requires them to consider the probable environmental consequences of any major federal activity, including activities of other organizations operating with the concurrence or support of a federal agency. This includes grant-supported activities under this Contract if federal funds are involved.	42 U.S.C. § 4321 <i>et seq.</i> ; 40 C.F.R. Part 1500 <i>et seq.</i>	
Federal Clean Air Act	Provides for federal, state, regional, and local programs to prevent and control air pollution. Applies to contracts in excess of \$100,000.	42 U.S.C. § 7401 <i>et seq.</i>	
Federal Water Pollution Control Act	Provides for federal, state, regional, and local programs to prevent and control water pollution. Applies to contracts in excess of \$100,000.	33 U.S.C. § 1251 <i>et seq.</i>	
National Historic Preservation Act ("NHPA") of 1966	Requires a Contractor to assist the federal grantor agency in complying with the NHPA by: (1) consulting with the state Historic Preservation Officer in investigations to identify any properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects by the contemplated federally assisted undertaking; (2) notifying the federal grantor agency of the existence of any such properties; and (3) complying with all requirements established by the federal grantor agency to avoid or mitigate adverse effects upon such properties.	16 U.S.C. § 470, <i>et seq.</i> ; 36 C.F.R. Part 800, <i>et seq.</i>	
Utah Clean Air Act	Prohibits smoking in public places.		Utah Code Ann. § 26-38-1, <i>et seq.</i>
Flood Disaster Act of 1973 and other flood hazard provisions	Requires a Contractor to purchase flood insurance for any area having special flood hazards as a condition to receiving federal financial assistance.	42 U.S.C. § 4106	
Energy Policy and Conservation Act	Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issue in compliance with the federal Energy Policy and Conservation Act.	42 U.S.C. § 6322	

Description of Act	Summary of Law	Applicable Federal Law	Applicable State Law
Miscellaneous			
HIPAA	Establishes standards for the electronic transmission of health information and for protecting the privacy of health information maintained by health plans, health care providers, and health care clearinghouses.	Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. Parts 160, 162, and 164	
Protection of Human Subjects	Requires basic protection of human subjects involved in Public Health Service grant supported research activities.	Public Health Service Act § 474(a); 42 U.S.C. § 2899; 45 C.F.R. Part 46	DHS Policy Manual, Policy No. 01-10.
Byrd Anti Lobbying Amendment	Requires certification by Contractor that it will not and has not used government appropriated funds to influence an officer or employee of any agency in connection with obtaining the contract, grant, or award. Applies to contracts in excess of \$100,000.	31 U.S.C. § 1352; 45 C.F.R. Part 93	Refer to Part VIII of this Contract ("Disclosure of Lobbying Activities")
Debarment and Suspension	Prohibits award of contracts to entities on list of debarred, suspended, or otherwise excluded entities.	45 C.F.R. Part 76; Exec. Order No. 12549; Exec. Order No. 12689	
Hatch Act	Prohibits certain employees of a state or local unit of government who work with federally financed programs from running for an elective office in partisan elections. The Act defines a covered officer or employee as "an individual employed by a State or Local Agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a federal agency."	5 U.S.C. § 1501, <i>et seq.</i>	Utah Code Ann. § 67-19-19
Abuse Reporting Requirements	Requires any person who learns of abuse to a child or to a vulnerable adult to report that abuse to law enforcement or to the appropriate division within DHS.		Utah Code Ann. § 62A-4a-403; Utah Code Ann. § 62A-3-302.
Conflicts of Interest - DHS employees- financial interest in Contractor's business.	Prohibits conflicts of interests, and requires Contractor to disclose any potential conflicts of interest.		Utah Code Ann. § 67-16-7(2); DHS Policy Manual, Policy No. 02-02.

PART VIII: DISCLOSURE OF LOBBYING ACTIVITIES

Title 31 United States Code (USC) § 1352 requires contractors with a contract in excess of \$100,000 to certify that they will not and have not used government appropriated funds to influence an officer or employee of any agency in connection with obtaining a contract, grant, or award. If Local Agency meets the criteria for disclosure set forth in the above-cited section, Local Agency shall complete and submit to the required federal entity, a Disclosure of Lobbying Activities form. Both this form and instructions for completing it can be found at the following website:

<http://www.whitehouse.gov/omb/grants/sflllin.pdf>

PART IX: JURISDICTION, COPYRIGHT, AND OTHER GENERAL PROVISIONS

1. **CONTRACT JURISDICTION:** The provisions of this Contract shall be governed and interpreted according to the laws of the State of Utah.
2. **SEPARABILITY CLAUSE:** The declaration by any court or other binding adjudicative body that any provision of this Contract is illegal or void shall not affect the legality or enforceability of any other provision of this Contract unless such provisions are mutually dependent.
3. **COPYRIGHT OWNERSHIP AND ACKNOWLEDGING DHS IN ADVERTISING:**
Except as otherwise expressly provided in this Contract or by state or federal law, DHS/DAAS owns the copyright for all materials developed by the Local Agency for DHS/DAAS, DHS or the State of Utah under this Contract. Nevertheless, if the Local Agency develops any materials for its own uses or purposes in connection with this Contract, and if such materials are not required by this Contract or requested by DHS/DAAS as part of the Local Agency's performance of this Contract, DHS/DAAS shall allow the Local Agency to use those materials free of charge, without requiring the Local Agency to obtain prior permission or a separate license. In addition, the Local Agency is entitled to use the results and information generated in connection with this Contract for the Local Agency's internal research and non-commercial uses, including scholarly publications and other non-commercial research purposes. In all written and oral discussions or advertising for the programs covered by this Contract (including all brochures, flyers, informational materials, interviews and talk shows), the Local Agency shall acknowledge that DHS provided funding for the programs.
4. **DHS/DAAS' AUTHORITY TO EXECUTE THIS CONTRACT:** DHS/DAAS has the authority to enter into this Contract pursuant to state and federal laws, including state statutes relating to the Utah Department of Human Services (Title 62A of the Utah Code), the Utah Procurement Code (Title 63, Chapter 56 of the Utah Code), state procurement regulations (Section R33 of the Utah Administrative Code), and related statutes which permit DHS/DAAS to purchase certain specified services.

5. **AUTHORITY OF PERSON SIGNING FOR THE LOCAL AGENCY:** The Local Agency represents that the person who has signed this Contract on behalf of the Local Agency has full legal authority to bind the Local Agency and to execute this Contract.
6. **LOCAL AGENCY HAS NOT ALTERED THIS CONTRACT:** By signing this Contract, the Local Agency represents that neither it nor its employees or representatives have in any way altered the language or provisions in the Contract, and that this Contract contains exactly the same provisions that appeared in this document and its attachments when DHS/DAAS originally sent it to the Local Agency.
7. **CERTIFICATION REGARDING APPLICABLE LAWS:** The Local Agency certifies that it has read this Contract, including Part I, Section C ("Local Agency's Compliance with Applicable Laws") and Part VII ("Summary of Some Commonly-Applicable Laws and Policies"), and the Local Agency agrees to comply with all applicable laws that govern its activities.

IN WITNESS WHEREOF, the parties executed this Contract:

LOCAL AGENCY

By: _____
Type name: _____
Title/Position: _____
Date: _____

LOCAL AGENCY

By: _____
Type name: _____
Title/Position: _____
Date: _____

APPROVED

By: _____
Richard Barker, Contract Analyst
State Division of Finance
Date: _____

APPROVED AS TO PROCUREMENT

By: _____
Rosalie Nance, Purchasing Agent
DHS Bureau of Contract Management
Date: _____

DHS/DAAS

By: _____
Type name: _____
Division of Aging and Adult Services
Date: _____

**APPROVED AS TO AVAILABILITY
OF FUNDS**

By: _____
Type name: _____
Budget Officer
Division of Aging and Adult Services
Date: _____